香港申訴專員公署
Office of The Ombudsman, Hong Kong



主動調查報告
Direct Investigation Report

政府對新界豁免管制屋宇違例建築工程所採取的執管行動
Government's Enforcement against Unauthorised Building Works in New Territories Exempted Houses

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Executive Summary
Direct Investigation Report

Government's Enforcement against Unauthorised Building Works in New Territories Exempted Houses

Introduction

Unauthorised building works ("UBWs") in New Territories Exempted Houses ("NTEHs") has been a long-standing problem of considerable concern.

2. On 1 April 2012, the Government implemented an enhanced enforcement strategy against UBWs in NTEHs, viz "safeguarding building and public safety, acting in accordance with the law, categorisation for control and management, and prioritisation for progressive enforcement". Enforcement actions against newly completed UBWs and existing ones in NTEHs would be prioritised according to their severity and risk level. As the enforcement authority, the Buildings Department ("BD") accords priority to UBWs constituting imminent danger, UBWs under construction or newly completed ones[1], and existing UBWs not posing imminent danger but constituting serious contravention of the law and posing higher potential risks, that is first round targets. Besides, through the "Reporting Scheme for UBWs in NTEHs", BD collects information on UBWs constituting less serious contravention of the law and ensures their safety. On the other hand, the Lands Department ("LandsD") plays a supporting role by providing relevant information to BD and takes lease enforcement actions against UBWs constituting imminent danger or those outside the ambit of BD.

3. After examining the work of BD and LandsD, we have the following comments and recommendations.

Our Findings

Statistics on UBWs Not Compiled

4. In the past, the Government had not conducted any comprehensive surveys or compiled statistics on NTEHs or UBWs in those houses, hence the absence of overall statistics on UBWs in NTEHs. Since the implementation of the enhanced strategy, BD has, in the course of follow-up on reports of UBWs or large-scale operations for the identification of first round targets, maintained figures on the number of NTEHs with UBWs found and the number of removal orders issued. It has also input the content of removal orders (comprising the types and numbers of UBWs concerned) into the Building Condition Information System. Nevertheless, BD has not made use of the aforesaid information to compile statistics on UBWs for analysis.

[1] Newly completed UBWs refer to UBWs completed on or after 28 June 2011.

5. We consider that without statistics on UBWs, it is difficult for BD to make systematic assessment of the effectiveness of the enhanced strategy in tackling UBWs in NTEHs and the overall changes after its implementation. For the purpose of analysis, BD should compile statistics on UBWs (including the types and numbers of UBWs involved in removal orders and of those subsequently removed) based on the information collected from its follow-up and enforcement actions. While the statistical information may not cover all NTEHs in the territory, the cumulative data can still provide an objective basis for BD's review of its enforcement actions.

Failing to Curb the Proliferation of UBWs

6. Since the implementation of the enhanced strategy, BD had issued 606 removal orders against UBWs under construction as at 2021. Of those orders, 147 (about 24.3%) remained outstanding as at the end of 2021, among which about 68% were issued in or before 2018, reflecting the long existence of the UBWs concerned. Similarly, of the 2,020 removal orders issued by BD against newly completed UBWs, 755 (about 37.4%) remained outstanding as at the end of 2021, among which 47.8% were issued in or before 2018. On the other hand, our case studies revealed that although BD could meet its performance pledge to arrange site inspection by a consultant within 48 hours after receiving a report of UBWs under construction, it took 9 to 18 months to issue a removal order after the inspection, which was an obvious failure to meet the objective of taking "immediate" enforcement action. BD's failure to take prompt enforcement actions has in a way encouraged non-compliant owners to delay fulfilling their legal responsibilities.

7. In our view, BD should review the existing guidelines and set clearer internal targets for processing tasks other than site inspections, so as to effectively combat UBWs under construction, thereby meeting the policy objective of curbing the proliferation of UBWs. BD should also explore streamlining the enforcement procedures for tackling UBWs under construction to expedite enforcement and demonstrate its determination to curb UBWs. After the launch of our investigation, BD and LandsD have reached a consensus where as long as a case fulfils certain criteria, BD is no longer obligated to consult LandsD whether the latter has issued or will issue a certificate of exemption. BD reckoned that this new arrangement could substantially reduce the number of cases warranting consultation with LandsD, thereby enhancing work efficiency.

Slow Progress of Large-Scale Operations

8. Each year, BD's consultants carry out large-scale operations in a number of target villages in the New Territories, during which preliminary inspections will be conducted, followed by detailed inspections at individual NTEHs with first round targets. As at the end of December 2021, BD completed inspections of only about 46% of recognised villages[2], and the large-scale operations launched in 2018 remained at the

[2] LandsD's List of Recognised Villages covers a total of 642 recognised villages in the territory.

stage of identifying NTEHs with first round targets. A forecast based on BD's latest work targets shows that the Department will need another 10 years to complete inspections of all recognised villages in Hong Kong.

9. Our case studies revealed BD's lengthy preparation for the issuance of removal orders. Besides, its consultants are required to submit various reports and documents to BD from time to time and the Department will give responses after vetting. Since several thousand of village houses are to be inspected each year, such frequent and substantial exchange of physical documents between BD and its consultants inevitably affects their work efficiency.

10. We consider that BD should review the existing arrangements for consultants' submission of work reports regarding large-scale operations and proactively identify areas for streamlining (such as more extensive use of electronic submission of reports), as well as explore measures to expedite the vetting of consultants' reports so as to speed up the issuance of removal orders. Meanwhile, BD should continue to monitor the performance of consultants.

Lack of Proactive Follow-up on Cases

11. As at the end of 2021, among the 5,384 removal orders issued by BD, 2,016 (about 37.4%) remained outstanding whilst the deadline for removal had passed. In some of the cases studied, BD's issuance of removal orders was followed by years of inaction. BD's failure to take timely action after issuing a removal order would likely convey a wrong message to the owner concerned that there would be no legal consequences for non-compliance. The owner might even have a false expectation that BD had accepted the existence of the UBWs.

12. BD's Building Condition Information System is equipped with a "to-do list" function to remind staff to follow up on cases. At the same time, the Progress Monitoring Committee comprising BD's senior staff regularly monitors the progress of enforcement actions and draws up timetables for handling outstanding cases. Nevertheless, the serious delays in BD's follow-up and enforcement actions as revealed in our case studies reflect the ineffectiveness of the existing monitoring mechanism. We consider that BD should step up its monitoring of follow-up and enforcement actions on UBWs in NTEHs and clearance of backlog cases of non-compliance in accordance with the timetable set by the Progress Monitoring Committee.

Ineffective Monitoring of Registration of Removal Orders with Land Registry

13. BD's internal guidelines require staff to send a copy of the removal order to the Land Registry ("LR") for registration soon after posting the order at the site concerned. However, the Department has not set any specific time frame for such work. Nor has any internal monitoring mechanism been established for the registration of removal orders with LR. As a result, BD cannot prevent potential delays or even omissions in a systematic manner. In our cases studied, removal orders were sent to

LR for registration only about 4 to 19 months after issuance or even omitted from registration.

14. Owing to BD's failure to arrange timely registration of removal orders with LR, on one hand potential NTEH buyers are unable to check through the land registration records whether the village house concerned involves any outstanding removal orders; on the other hand, the deterrent effect of removal orders cannot be realised to the full extent through registration. We consider that BD should check the removal orders that are outstanding for any omitted registration with LR, and handle them promptly. In addition, for effective monitoring in the future, BD should set a specific time frame for the registration of removal orders with LR for staff to follow and establish a mechanism for internal monitoring to ensure compliance in all cases.

Insufficient Deterrent Effect

15. BD had brought a total of 1,383 charges against non-compliance with removal orders as at the end of 2021. Of those prosecutions, there were 972 convictions with 86 (8.8%) of them being reconvictions. Some of the removal orders remained outstanding for several years or more. We find it necessary for BD to take continuous enforcement actions against owners who repeatedly fail to observe statutory orders so as to urge their compliance.

16. In the past decade, the average fine for each conviction was about $9,500 only and there were only nine cases (involving three NTEHs) in which imprisonment was imposed. The average fine upon re-conviction for persistent non-compliance increased to about $13,400 only. We find the existing penalty insufficient to deter non-compliance. Where it involves flagrant contravention of the law (such as NTEHs of four or more storeys) or continuing irregularities, BD should reflect to the Court the seriousness of the case particularly the harm caused by UBWs to society. For greater deterrence, BD should also step up prosecutions against persistent non-compliant owners until their compliance with the removal orders.

Strengthening Publicity and Public Education

17. On publicity and public education, BD raises public awareness of the enhanced strategy through multiple channels including maintaining communication with stakeholders, publicising leaflets and launching campaigns on digital platforms. BD's effort in this regard is laudable.

18. In our view, conviction cases with a heavy penalty imposed by the Court (especially imprisonment) are important materials for publicity and education. Apart from the existing practice of citing the penalties imposed by the Court in press releases and warning letters to individual owners, BD may consider publicising more widely conviction cases involving heavy penalties as a warning to others.

Mechanism for Information Exchange and Coordination between BD and LandsD Should be Improved

19. Construction of an NTEH does not require submission of a plan for BD's approval, but application to LandsD for a certificate of exemption instead. BD has to seek information on individual village houses from LandsD before it can determine whether any UBWs are involved and what enforcement actions should be taken. Similarly, LandsD's decision whether to take lease enforcement actions depends on BD's follow-up actions. Currently, BD can obtain information on lot boundaries and locations of NTEHs, aerial photographs and relevant land leases from the Government's internal geographic information system and LR's Integrated Registration Information System. Nevertheless, in the course of follow-up on UBWs in NTEHs, it is still necessary for BD and LandsD to exchange other important information such as whether the NTEH concerned involves any application for redevelopment and whether LandsD would issue a retrospective certificate of exemption for the house.

20. After the launch of our investigation, BD and LandsD have reached a consensus to streamline the procedures in order to reduce the number of cases warranting consultation with LandsD (see **para. 7**). Nevertheless, we consider it is still necessary for BD and LandsD to make improvement measures to ensure timely handling of cases where information exchange is required. The departments should regularly draw up a list of pending cases with information outstanding, so as to monitor information exchange and avoid delays or omissions, which would compromise enforcement efficiency. The departments should also consider setting up an inter-departmental liaison group to strengthen coordination and enhance the effectiveness of handling special cases.

Holistic Review of Enhanced Strategy and Mechanism for Assessing Effectiveness

21. It is commendable of the Government to have implemented the enhanced strategy in April 2012 with a clear policy objective to step up enforcement against newly completed UBWs and existing ones which constitute serious contravention of the law. However, the above analysis reveals multiple inadequacies in the actual implementation of the strategy in the past decade that inhibit full accomplishment of the policy objective. As a matter of fact, there were already a large number of UBWs in NTEHs prior to the implementation of the enhanced strategy. Worst still, during the implementation of the enhanced strategy, nearly half of BD's enforcement actions have been against UBWs built after the implementation (i.e. UBWs under construction or newly completed ones), and the number of reports of UBWs has been rising. While we acknowledge BD's continuous effort in curbing UBWs, the slow progress of large-scale operations and the backlog of cases reflect that the Department may not have the capacity to manage all necessary enforcement actions. This would not only distract BD from tackling cases involving the most serious contravention of the law, but also undermine the credibility of the enforcement policy attributable to ineffective enforcement.

22. We consider that BD should consolidate its experience in implementing the

enhanced strategy in the past decade, holistically review the policy and resource utilisation and explore how the limited resources can be utilised pragmatically to target the most serious types of UBWs and repeated offenders for the time being. BD should in tandem formulate performance indicators for measuring effectiveness in accordance with the policy objective. This would not only help BD evaluate the effectiveness of work and review the measures, but also allow members of the public to understand more easily whether the problem of UBWs in NTEHs has been improved.

Our Recommendations

23. We have made the following recommendations to BD and LandsD:

BD

(1) compile statistics on UBWs (including the types and numbers of UBWs involved in removal orders and of those subsequently removed) based on the information collected from follow-up and enforcement actions for analysis purposes;

(2) review the existing guidelines and set clearer internal targets for processing tasks other than site inspections regarding UBWs under construction;

(3) explore streamlining the enforcement procedures for tackling UBWs under construction;

(4) review the existing arrangements for consultants' submission of work reports regarding large-scale operations and proactively identify areas for streamlining (such as more extensive use of electronic submission of reports) as well as explore measures to expedite the vetting of consultants' reports. Meanwhile, BD should continue to monitor the performance of consultants;

(5) step up the monitoring of follow-up and enforcement actions on UBWs in NTEHs and the clearance of backlog cases of non-compliance in accordance with the timetable set by the Progress Monitoring Committee;

(6) check the removal orders that are outstanding for any omitted registration with LR, set a specific time frame for the registration of removal orders with LR and establish a mechanism for internal monitoring;

(7) reflect to the Court the seriousness of cases involving flagrant contravention of the law or continuing irregularities and step up

prosecutions against persistent non-compliant owners for greater deterrent effect;

(8) consider publicising more widely conviction cases involving heavy penalties as a warning to others;

(9) holistically review the policy of the enhanced strategy and resource utilisation and explore how the limited resources can be utilised pragmatically to target the most serious types of UBWs and repeated offenders for the time being. BD should in tandem formulate performance indicators for measuring effectiveness in accordance with the policy objective;

BD and LandsD

(10) regularly draw up a list of pending cases with information outstanding for monitoring possible delays or omissions in information exchange; and

(11) consider setting up an inter-departmental liaison group to strengthen coordination and enhance the effectiveness of handling special cases.

Office of The Ombudsman
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1

INTRODUCTION

BACKGROUND

1.1 For years, unauthorised building works ("UBWs") in New Territories Exempted Houses ("NTEHs") has remained a problem of considerable concern. This Office's previous direct investigations into the Government's enforcement action against UBWs in NTEHs in 1996, 2004 and 2011 revealed that the actions taken by the Buildings Department ("BD") and Lands Department ("LandsD") had neither been efficient nor effective. In response to our recommendations made in the previous investigations, the Government implemented a number of measures and policies (see **paras. 3.1-3.6**). For example, after we published the direct investigation report in 2011, BD revised the definition of "UBWs under construction" to extend the coverage (see **paras. 3.4-3.6**); issued guidelines on collection of environmental evidence; instructed its staff to record the justifications for changing the consultant's recommendations and notify the consultant accordingly; and clarified the demarcation of responsibilities between BD and LandsD.

1.2 On 1 April 2012, BD implemented an enhanced enforcement strategy against UBWs in NTEHs, viz "safeguarding building and public safety, acting in accordance with the law, categorisation for control and management, and prioritisation for progressive enforcement". Enforcement actions against newly completed UBWs and existing ones in NTEHs would be prioritised according to their severity and risk level. It has been over a decade since the enhanced strategy was implemented, but we have learned from complaint cases and media reports that UBWs in NTEHs remain pervasive.

1.3 In this light, The Ombudsman announced the launch of this direct investigation pursuant to section 7(1)(a)(ii) of The Ombudsman Ordinance on 29 June 2021 to examine the Government's enforcement measures to tackle UBWs in NTEHs and their effectiveness and to make recommendations for improvement where necessary.

SCOPE OF INVESTIGATION

1.4 The scope of this direct investigation covers:

- the enforcement actions taken by BD and LandsD against UBWs in NTEHs according to the enhanced strategy and the effectiveness of such actions; and

- any areas for improvement or enhancement.

PROCESS OF INVESTIGATION

1.5 Our investigation includes:

- studying information provided by BD and LandsD, which includes case files and data regarding enforcement actions;

- inviting public views[1] and examining the information provided by members of the public; and

- studying relevant complaint cases and media reports.

1.6 On 26 August 2022, we issued a draft investigation report to BD and LandsD for comments. Upon considering and incorporating their comments as appropriate, we completed this final report on 13 February 2023.

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[1] We received a total of six submissions of public views during this direct investigation.

2

UBWs IN NTEHs

DEFINITION OF NTEHs AND RELEVANT LEGISLATION

2.1 NTEHs generally refer to village houses situated in the New Territories and designed and built in compliance with the exemption criteria in respect of the height and roofed-over area stipulated in the Buildings Ordinance (Application to the New Territories) Ordinance ("BO(ATNT)O") (Cap. 121, Laws of Hong Kong), which thus qualify them for exemption from certain provisions (including provisions relating to the approval and consent from BD for carrying out building works)[2] of the Buildings Ordinance ("BO") (Cap 123, Laws of Hong Kong) and its subsidiary regulations. The exemption criteria include: the new house should have no more than three storeys; its height should not exceed 8.23 metres (about 27 feet); and its roofed-over area should not exceed 65.03 square metres (about 700 square feet). According to BD, such requirements are relatively simple because NTEHs carries lower building risks and causes minimal nuisance to the public.

2.2 Prior to 1961, buildings in the New Territories were not subject to the prevailing BO. BO(ATNT)O (the then Cap. 322) took effect on 1 January 1961, stipulating the criteria for exemption for village houses, and was subsequently replaced by the ordinance of the same title, i.e. BO(ATNT)O (Cap. 121) on 16 October 1987. The new ordinance preserved the exemptions for eligible village houses and empowered the Director of Lands to issue certificates of exemption so that those village houses could be exempted from the specified provisions of BO and the regulations made thereunder.

2.3 Currently, BO(ATNT)O requires that NTEH applicants obtain a certificate of exemption in respect of building works issued by the District Lands Officer before the commencement of any building works unless the Building Authority (i.e. Director of Buildings) has formally approved the plans prepared by the authorised person hired by the applicants. The applicants are also required to apply to the District Lands Officer for certificates of exemption in respect of site formation works and drainage works respectively. No works should commence before the owner obtains the required certificates of exemption or confirms that the plans have been approved by the Building Authority.

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[2] Exemptions from provisions in sections 4, 9, 9AA, 14, 21, 28, 30, 30A, 30B, 30C, 30D, 30E and 30F of BO.

2.4 BD and LandsD have not compiled any statistics on the total number of existing NTEHs. According to LandsD's information, there are 642 recognised villages. Since the commencement of the Director of Lands being empowered to issue certificates of exemption on 16 October 1987, LandsD had issued 48,110 certificates of exemption[3] in respect of building works as at 31 December 2021.

UBWs IN NTEHs

2.5 Any additions, alterations or minor works that result in the height and roofed-over area of an NTEH exceeding the requirements stipulated in BO(ATNT)O (see **para. 2.1**) would invalidate the exemption and in turn render the NTEH and the additions, alterations or minor works themselves into UBWs.

2.6 Buildings built in the New Territories prior to 1 January 1961 would not come within the above definition of UBWs so long as there have been no alternation, addition or reconstruction after that date, irrespective of whether they comply with the exemption criteria. For village houses built before 16 October 1987 and compliant with the requirements stipulated in BO(ATNT)O (the then Cap. 322), certificates of exemption from LandsD were not required.

2.7 As the Government had not conducted any comprehensive survey or compiled any statistics on UBWs in NTEHs, BD and LandsD do not have the overall statistics on such UBWs.

RESPONSIBILITY TO FOLLOW UP ON UBWs

BD

2.8 BD pointed out that while NTEHs are essentially different from other buildings subject to BO in terms of construction planning, design, building and regulatory framework, and they are qualified for certain exemptions under BO(ATNT)O, the Government adopts the same approach to all types of buildings in maintaining building safety and protecting the public interest. NTEHs granted exemptions are still subject to other provisions of BO, which include section 24 on demolition of UBWs and section 26 on regulation of dangerous buildings.

2.9 Pursuant to section 24(1) of BO, the Building Authority may issue an order to require demolition of UBWs in an NTEH by the person concerned. Upon issuance of the order, the Building Authority may register the order with the Land Registry ("LR") in the land title of the village house concerned. Unless the person concerned has complied with the order to the satisfaction of the Building Authority, the order will not be revoked. BD's internal guidelines require staff to send a copy

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[3] Apart from construction of NTEHs, certificates of exemption had also been issued to reconstruction of houses, agricultural structures, licensed structures, etc.

of the removal order to LR for registration in the land title of the house soon after posting the order at the site concerned. Afterwards, BD staff will record the registration with LR on the Building Condition Information System.

2.10 If the person concerned fails to comply with the order without reasonable excuse, the Building Authority may prosecute the person in accordance with section 40(1BA) of BO. On conviction, the person concerned may be liable to a fine of $200,000 and imprisonment for one year as well as a daily fine of $20,000 during which the failure to comply with the order has continued. If the required works have not been carried out by the due date, the Building Authority may employ a government contractor to carry out the works under section 24(3) of BO and recover the cost of works, together with a supervision cost and surcharge, from the person concerned in accordance with section 33 of BO. As regards arrears of the cost of works, supervision cost and surcharge, the Building Authority may register a certificate with LR in the land title of the relevant property as a first charge. Even if a contractor is employed to undertake the required works, the Building Authority may still instigate prosecution against the non-compliant owners.

LandsD

2.11 Whether UBWs in NTEHs are in breach of the land lease depends on the relevant lease conditions and documents signed for the relevant land lot such as the conditions of the certificate of exemption and building licence issued by LandsD in accordance with BO(ATNT)O and the actual condition of the building use. For example, there are lease conditions limiting the building height on the lot at 25 feet or two storeys. There are also lease conditions requiring prior approval for any building works before construction.

2.12 As the landlord, LandsD may take lease enforcement action against any UBWs confirmed to be in breach of lease conditions by, for example, issuing a warning letter to the land owner to require rectification of irregularity. In case the owner fails to rectify the breach by the due date, LandsD will register the warning letter in the relevant property titles in LR (commonly known as "imposing an encumbrance"). LandsD's enforcement action aims to have the owners bore the consequence of their breach of lease conditions.

2.13 If NTEH owners have not obtained the required certificate of exemption when they build their house, LandsD may issue a retrospective certificate after the construction of the house under BO(ATNT)O provided that the village house concerned meets the criteria for exemption.

3

ENHANCED ENFORCEMENT STRATEGY AGAINST UBWs IN NTEHs

OUR PREVIOUS DIRECT INVESTIGATIONS AND CHANGES IN GOVERNMENT'S ENFORCEMENT POLICIES

3.1 In 1996, this Office conducted a direct investigation and concluded that insufficient resources of the relevant Government's departments and the low priority accorded to lease enforcement under the policy introduced in 1975 had resulted in the proliferation of UBWs in NTEHs. We recommended that the Government review the priority accorded to the enforcement against UBWs in NTEHs in the light of circumstantial changes since 1975.

3.2 In 2001, the Government decided to adopt a strategy to prioritise enforcement actions against UBWs to tackle progressively all UBWs in buildings within the territory. On combating UBWs in NTEHs, the policy focused on the UBWs constituting obvious hazard or imminent danger to life or property and UBWs under construction. Unlike other types of buildings, newly constructed UBWs in NTEHs (i.e. works recently completed within 12 months) were not among BD's targets of enforcement actions. LandsD would only take priority lease enforcement action against cases of blatant breach such as over-sized NTEHs.

3.3 In our second direct investigation completed in 2004, we still found inadequacies in the Government's work including that the enforcement strategy introduced in 2001 (see **para. 3.2**) failed to address the fundamental problems of insufficient resources and limitations of enforcement measures, which resulted in the failure to curb UBWs effectively. We recommended that the Government review the prevailing enforcement strategy and develop a realistic enforcement policy for controlling UBWs in NTEHs and curbing their proliferation, rationalising less serious cases while taking proactive enforcement actions against serious ones.

3.4 In 2006, the Government revised the definition of "UBWs under construction" such that an item of UBW should not be considered as a UBW under

construction if it is "practically completed", i.e. the construction of the concrete framework of the structure or the cover of the stairhood of the building has been completed. BD would not take priority action against those UBWs.

3.5 We conducted another direct investigation in 2011 to examine the enforcement policy mentioned in the preceding paragraph. We pointed out in the investigation report that the Government's narrowing down of the definition of UBWs under construction was not in line with its commitment to curb the proliferation of UBWs in NTEHs. We also considered that the Government's inconsistent approaches for tackling newly constructed UBWs in NTEHs and in buildings other than NTEHs had caused inequity and given a signal that owners of NTEHs were privileged. We recommended that the Government revise its enforcement policy applicable to NTEHs.

3.6 In response to our recommendation in the direct investigation, BD revised the definition of UBWs under construction in April 2011 to broaden the scope to cover those building works in which the main structure has completed but decoration or site clearance works are still in progress.

2012 ENHANCED ENFORCEMENT STRATEGY

3.7 In April 2012, the Government implemented an enhanced enforcement strategy against UBWs in NTEHs. The enhanced strategy is founded on four key principles, namely safeguarding building and public safety, acting in accordance with the law, categorisation for control and management, and prioritisation for progressive enforcement. According to the strategy, BD prioritises enforcement actions against UBWs in NTEHs in accordance with the existing legislation and with regard to building safety so as to curb the proliferation of UBWs and safeguard the structural safety of NTEHs. In April 2012, BD established a dedicated Village Houses Section, headed by a Chief Officer/Village Houses (of directorate rank) and comprising 37 professional and technical officers, to implement the enhanced strategy. Starting from 2019, the establishment of the Section has been increased to 43 including both civil servants and non-civil service contract staff[4].

3.8 Under the enhanced strategy, BD categorises UBWs in NTEHs into the following three types.

Type I UBWs

3.9 BD will take immediate action against UBWs constituting obvious hazard or imminent danger to life or property and UBWs under construction or newly completed.

[4] According to BD, the increase in manpower was intended for the work brought by the inclusion of photovoltaic systems on the roof or the roof of stairhood of NTEHs on the list of specified green and amenity facilities in October 2018 (see **para. 3.26**).

UBWs constituting obvious hazard or imminent danger to life or property

3.10 Where the structure of a UBW constitutes obvious hazard or imminent danger to itself or to the main building it attaches, or to other buildings or the public, the UBW will be taken as a UBW constituting obvious hazard or imminent danger to life or property. For example, UBWs about to collapse, those causing structural deformation or cracks to the main building it attaches or those of high risk of collapse. BD's professional staff will make professional assessment on the situation in those cases.

UBWs under construction

3.11 UBWs under construction include building works in which the main structure has completed but decoration or site clearance works are still in progress. By tackling these UBWs, BD can more effectively curb the proliferation of newly completed UBWs.

3.12 Any UBWs under construction that meet all of the following requirements warrant priority enforcement actions by BD: (a) building works which are not exempted under BO but commenced without BD's prior approval or consent; and (b) building works built without the issuance of a certificate of exemption by the Director of Lands under BO(ATNT)O and the village house concerned or the one with structures erected does not meet the criteria for exemption in respect of the height and size as stipulated in the ordinance.

3.13 Upon receipt of a report, BD will conduct a site inspection within 48 hours. If the report is substantiated, BD will issue a removal order to the relevant village house owner as soon as practicable.

Newly completed UBWs

3.14 Newly completed UBWs refer to those UBWs meeting all of the following requirements: (a) UBWs completed on or after 28 June 2011; (b) building works which are not exempted under BO but commenced without BD's prior approval or consent; and (c) building works built without the issuance of a certificate of exemption by the Director of Lands under BO(ATNT)O and the village house concerned or the one with structures erected does not meet the criteria for exemption in respect of the height and size as stipulated in the ordinance.

Type II UBWs

3.15 Among other existing UBWs[5] not constituting imminent danger, BD will take priority and proactive action against those constituting serious contravention of the law and posing higher potential risks to building safety. This type of UBWs will be taken as the first round targets.

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[5] Existing UBWs refer to those UBWs completed before 28 June 2011.

Existing UBWs Not Posing Imminent Danger but Constituting Serious Contravention of the Law and Posing Higher Potential Risks

3.16 The UBWs identified as the first round targets by BD mainly include village houses of four storeys or above; buildings that are not issued and will not be issued a certificate of exemption by LandsD and constructed without BD's prior approval of plans or consent; enclosed rooftop structures covering more than 50% of the roofed-over area; and unauthorised projecting structures attached to UBWs (see **Table 1**). Each year, BD selects target villages from recognised villages in the New Territories for conducting large-scale operations to inspect village houses so as to identify first round targets for priority enforcement actions. For example, BD appointed two consultants to conduct large-scale operations at 36 target villages in 2021.

Table 1: UBWs that will be identified as first round targets

Photographs (provided by BD)	**Types of UBWs**
 **Figure 1**	Village house of four storeys or above, constructed of reinforced concrete or masonry.
 **Figure 2**	Structures of single storey or above, constructed of reinforced concrete, masonry or other materials on a 3-storey NTEH.

Photographs (provided by BD)	Types of UBWs
 **Figure 3**	Redevelopment, alteration or addition carried out on private building lot of which the lease stipulates no restriction on building height and number of storeys, and in contravention of the exemption criteria prescribed in the prevailing BO(ATNT)O (the then Cap 322 or the prevailing Cap 121) since the Ordinance took effect on 1 January 1961. No approval has been obtained in accordance with BO for the aforesaid construction works. With the exception of the UBWs prioritised for deferred enforcement.
 **Figure 4**	Height or roofed-over area of the main building exceeds the exemption criteria prescribed in BO(ATNT)O. No approval has been obtained in accordance with BO for erection of the building.
 **Figure 5**	Enclosed rooftop structures constructed of reinforced concrete, masonry or other materials, with a coverage of more than 50% of the roofed-over area of the main building.

Photographs (provided by BD)	Types of UBWs
 **Figure 6**	Buildings not issued with a certificate of exemption in accordance with BO(ATNT)O prior to the commencement of works, and LandsD will not issue such a certificate. No approval has been obtained in accordance with BO for the works.
 **Figure 7**	Unauthorised projecting structures attached to UBWs. For example, a signboard erected on unauthorised rooftop structures.

<u>Large-Scale Operations</u>

3.17 BD selects primarily villages in which the NTEHs have more and complicated UBWs as target villages for launching large-scale operations. It aims to take priority enforcement actions against large-scale UBWs so as to remove safety hazards promptly.

3.18 BD has set out the time frames for major tasks in the consultancy agreements regarding large-scale operations. The terms and conditions of consultancy agreements stipulate that prior to launching a large-scale operation, the consultant should devise a timetable for action and notify the villagers and village representatives of the target village in writing. The consultant is required to conduct preliminary inspections to the target villages for checking the number of village houses and identifying those with first round targets, which will be followed by a preliminary inspection report to BD within eight weeks. Based on the consultant's findings and assessment during the preliminary inspections, BD will give instructions to the consultant for conducting a detailed survey on the village houses

with first round targets individually. The consultant is required to submit a survey report for each of those village houses within four to eight weeks. After studying the survey reports, BD will instruct the consultant on the village houses to which a removal order should be drafted and posted at the site. The consultant shall inspect the village houses in accordance with the schedule to check the compliance with the removal orders. The terms and conditions of the agreement stipulate that at each stage of a large-scale operation, BD staff will respond within two weeks upon receipt of the consultant's submission of reports and documents.

3.19 BD has a mechanism in place to monitor the consultants' work performance and quality including examining their submission of reports and documents to ensure completion of assignments according to the consultancy agreement. Through regular progress reports and meetings, BD staff will monitor the progress and quality of the consultants' work and assess their performance and prepare a report on a quarterly basis. Where a consultant's performance is unsatisfactory or it fails to meet the requirements, BD will issue a warning letter or give a poor performance report in a timely manner to urge improvement. Depending on the situation, BD will also impose a penalty including suspension of tendering bids for other consultancy tasks by the consultant concerned. For example, in 2018, BD issued a warning letter to a consultant who failed to submit inspection reports on time and the consultant later showed improvement in its service performance.

3.20 Each year, BD provides LandsD with a list of selected target villages for conducting large-scale operations on first round targets, so as to enable LandsD to prepare relevant information in advance for BD's perusal. Before confirming whether enforcement actions should be taken, BD has to obtain from LandsD information about the site on which UBWs are erected, such as building restrictions on the lot, whether it is a short-term tenancy site, and whether LandsD will issue a retrospective certificate of exemption.

Type III UBWs

3.21 After handling first round targets, BD will tackle in phases those existing UBWs constituting less serious contravention of the law and posing lower potential risks.

<u>Existing UBWs Constituting Less Serious Contravention of The Law and Posing Lower Potential Risks</u>

3.22 Existing UBWs constituting less serious contravention of the law and posing lower potential risks refer to those UBWs meeting all of the following requirements: not constituting obvious hazard or imminent danger to life or property; not under construction or newly completed; not categorised as first round targets; and no enforcement action had been taken before 28 June 2011.

3.23 As this type of UBWs varies in form and size, BD gathers details about them via the Reporting Scheme for UBWs in NTEHs ("Reporting Scheme"). BD will categorise the UBWs to make risk assessment and formulate progressive enforcement plans accordingly.

Reporting Scheme

3.24 The Reporting Scheme launched by BD allowed NTEH owners to report existing UBWs which were completed before 28 June 2011, not categorised as first round targets and on which no enforcement action had commenced. The reporting period started on 1 April 2012 and ended on 31 December 2012. The owners concerned are required to conduct safety inspection of the structures concerned every five years. Unless imminent danger is detected, reported UBWs will not be removed immediately during BD's enforcement operations for first round targets. All UBWs not reported to BD by the prescribed date will be subject to BD's progressive enforcement actions, same as newly completed UBWs.

3.25 The Reporting Scheme aims primarily to delineate existing UBWs and newly completed ones to facilitate enforcement actions. Besides, regular inspections by qualified persons can ensure that UBWs remain safe. While BD can make use of the data and information obtained via the Reporting Scheme and work out the arrangement details and schedule for progressive enforcement actions against UBWs, the information provided by owners about the UBWs (whether or not they are accepted) will not be used for issuing removal orders or as evidence in prosecutions. Upon receiving reports of UBWs or finding discrepancies between the actual condition of UBWs and reported details, BD will handle them according to the enhanced strategy.

Green and Amenity Facilities

3.26 Some specified green and amenity facilities, whether they currently exist in NTEHs or will be installed in new and existing village houses, are allowed to be retained or installed at any time in future without the permission from LandsD or BD, provided that the village house concerned is a village house exempted under BO(ATNT)O. The objective is to balance enforcement actions and daily needs of villagers. Such facilities include canopies, metal drying racks, main entrance metal gate, etc. The list of specified green and amenity facilities, last updated in October 2018 to include photovoltaic systems on the rooftop or the roof of stairhood, now covers 20 types (see **Appendix**). BD and LandsD will continue to review the list.

Publicity

3.27 According to BD, it has duly considered various factors and constraints in formulating the enhanced strategy. Apart from consulting the Panel on Development of the Legislative Council, BD has been maintaining communication with the Heung Yee Kuk N.T. ("HYK") and Rural Committees to increase NTEH

owners' understanding of its stance and enforcement criteria regarding UBWs in NTEHs through various channels, which include: publishing a booklet on "Village Houses without unauthorised building works put your mind at ease"[6] for the public's easy reference; producing a publicity video and a poster; uploading the contents of the enhanced strategy to BD's website; and attending meetings of the District Councils and HYK regularly. Moreover, in the warning letters issued to owners, BD will also remind them about the maximum fine and term of imprisonment for non-compliance with removal orders as well as the penalty imposed in recent cases. For example, "Over 99% of recent prosecution cases on this offence were convicted and there has been a case that a fine of about $200,000 was imposed by the court on the convicted owner." BD has also made public the penalty imposed on non-compliant case of serious nature by means of press releases.

3.28 In addition to traditional channels of publicity, BD also uses digital platforms to announce different promotions and events such as making use of social media to provide information about UBWs in village houses and installation of photovoltaic systems, explaining the enhanced strategy against UBWs in NTEHs and reminding the public to refrain from building UBWs and to demolish UBWs subject to removal orders. Besides, BD regularly updates the contents of its website including the Building Safety Quarterly for education purpose. BD will continue its efforts into public education and publicity on building safety.

3.29 BD also publicises relevant information to contractors and authorised persons undertaking works in NTEHs. For example, BD will proactively organise meetings with individual contractors to remind them not to engage in UBWs and that they should comply with the requirements stipulated in the leaflet relating to installation of green and amenity facilities or they may be prosecuted. Besides, BD's practice note for Authorised Persons, Registered Structural Engineers and Registered Geotechnical Engineers stipulates that they must remind clients to seek the required approval and consent prior to the commencement of building works, and that any persons who carry out UBWs may be prosecuted. BD has also issued a practice note to remind registered professionals and registered contractors to comply with BO. In case of irregularities, misconduct (including abetting owners and other persons to carry out UBWs) or negligence, BD will take necessary actions pursuant to BO such as disciplinary actions.

ROLE OF LANDsD

3.30 LandsD established internal guidelines between late 2011 and mid-2012 to align with BD's enhanced strategy. The guidelines stipulate that on receiving a report or referral about suspected UBWs in NTEHs, the District Lands Office ("DLO") concerned will conduct a site inspection and investigation. Where the UBWs in question fall within the category of green and amenity facilities which are exempted under the policy (see **para. 3.26**), the UBWs will not be regarded as in

[6] Link to the webpage: https://www.bd.gov.hk/doc/tc/resources/pamphlets-and-videos/VHWUBW_b.pdf

breach of the conditions of lease or building licence. If the UBWs do not fall into this category, LandsD will refer the case to BD for follow-up action.

3.31 If BD's response confirms that the UBWs in question are not exempted from removal for the time being under the Reporting Scheme or are not within the ambit of BD, LandsD will take lease enforcement actions under the prevailing mechanism, which include issuing a warning letter to the owner to require rectification of the irregularities. In case the owner fails to rectify the irregularities by the deadline, LandsD will register the warning letter in the title of the property in LR, which is commonly known as imposing an encumbrance.

3.32 LandsD reviews quarterly the cases involving imposition of encumbrance. Where the irregularities persist, the respective DLO will refer the case to the District Review Board, and depending on the actual situation and priority, the Board will consider whether further lease enforcement actions (including re-entering the site/property concerned) are necessary pursuant to the lease and the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap 126, Laws of Hong Kong).

3.33 For UBWs identified as first round targets, LandsD will not immediately issue a warning letter to the owners in breach of the lease conditions, so as to allow them to promptly remove the UBWs in accordance with BD's enhanced strategy and rectify irregularities constituting contravention of the law and posing risks higher than those involving breaches of the lease.

3.34 Nevertheless, if the UBWs in NTEHs are identified to be constituting obvious hazard or imminent danger to life or property and in breach of relevant lease conditions, LandsD will, apart from referring the case to BD for follow-up, take lease enforcement actions in accordance with the prevailing mechanism including issuance of a warning letter. In case an owner fails to rectify the irregularities by the deadline, LandsD will consider re-entering the relevant lot or vest relevant interest in the Government.

4

EFFECTIVENESS OF ENFORCEMENT ACTIONS

4.1 The Government has implemented the enhanced strategy against UBWs in NTEHs for more than a decade. According to the strategy and the delineation of duties between departments, BD is the enforcement authority responsible for taking priority enforcement actions against UBWs constituting imminent danger, UBWs under construction or newly completed and existing ones not posing imminent danger but constituting serious contravention of the law (i.e. first round targets). Besides, BD collects information on UBWs constituting less serious contravention of the law via the Reporting Scheme. On the other hand, LandsD only takes lease enforcement actions against UBWs constituting imminent danger, UBWs not categorised as first round targets and those not covered by the Reporting Scheme.

4.2 We have analysed the statistics about UBWs handled by BD and LandsD since the implementation of the enhanced strategy to examine the effectiveness of their work.

REPORTS OF UBWs IN NTEHs

LandsD

4.3 Between 2012 and 2021, LandsD received about 310 reports of breach of lease involving UBWs in NTEHs on average each year. Nevertheless, LandsD had not recorded the figures on the NTEHs in breach of lease and UBWs involved in those reports. LandsD conducted an average of 1.05 to 3.32 inspections for each report of UBWs. The numbers of reports received and inspections conducted by LandsD are listed below:

Table 2: Numbers of reports of UBWs in NTEHs received by LandsD

Year	Number of reports received	Number of inspections conducted for the reports received	Average number of inspections conducted for each report
2012	488	1,060	2.17
2013	299	731	2.44
2014	195	628	3.22
2015	228	758	3.32
2016	142	350	2.46
2017	223	536	2.40
2018	310	326	1.05
2019	357	413	1.16
2020	367	405	1.10
2021	528	566	1.07
Total	3,137	5,773	1.84

4.4 Between April 2012 and December 2021, LandsD issued a total of 161 warning letters in cases involving breach of lease due to UBWs and imposed an encumbrance on the property title concerned in 54 cases. LandsD had not re-entered the lot concerned or vested the relevant interest in the Government in any of these cases. The figures on enforcement actions taken against NTEH owners for breach of lease due to UBWs are listed below:

Table 3: LandsD's enforcement actions against NTEH owners for breach of lease involving UBWs

Year	Number of NTEHs involving breach of lease	Number of warning letters issued*	Number of cases involving imposition of an encumbrance *	Number of cases in which the lot concerned was re-entered or relevant interest vested in the Government
2012 (Since April)	3	5	3	0
2013	0	0	0	0

Year	Number of NTEHs involving breach of lease	Number of warning letters issued*	Number of cases involving imposition of an encumbrance *	Number of cases in which the lot concerned was re-entered or relevant interest vested in the Government
2014	4	8	1	0
2015	7	9	7	0
2016	10	10	2	0
2017	11	11	1	0
2018	9	16	6	0
2019	27	39	15	0
2020	14	18	10	0
2021	33	45	9	0
Total	118	161	54	0

* As some cases were processed across different years, the cases that involved issuance of warning letters may not be the same as those where LandsD imposed an encumbrance on the property title concerned in the year. Depending on the merits of individual cases, LandsD may issue more than one warning letter against a village house. While the owners of some cases had appealed against the warning letters or applied to LandsD for a retrospective certificate of exemption, other cases were handled by means of imposition of an encumbrance.

4.5 As to why reports of breach of lease received outnumbered the enforcement actions taken, LandsD said it was mainly because: some were repeated complaints; investigation findings revealed that the UBWs reported were green and amenity facilities subject to exemption under the enhanced strategy; the owners concerned had rectified the irregularities; the case did not involve breach of lease conditions; and BD had yet to confirm whether the UBWs in question were covered by the Reporting Scheme or the case concerned was within its ambit. LandsD explained that referral of UBW cases between LandsD and BD is part of the routine communication between the two departments. Hence, LandsD has not recorded figures on referral of cases to or by BD.

BD

4.6 Between April 2012 and December 2021, the number of reports of UBWs received by BD increased from 2,127 in 2012 to 8,552 in 2021. On average, BD received 4,410 reports of UBWs and identified after investigation 2,780 NTEHs with UBWs each year during the period (making up a total of more than 27,000

NTEHs). Currently, BD will record the content of removal orders (comprising the types and numbers of UBWs identified) on the Building Condition Information System. Nevertheless, BD has not compiled any statistics on UBWs. Below are the numbers of reports of UBWs received and NTEHs with UBWs identified by BD.

Table 4: Numbers of reports of UBWs in NTEHs received and NTEHs with UBWs identified by BD

Year	Number of reports received	Number of cases in which inspections were conducted#	NTEHs with UBWs identified*
2012 (Since April)	2,127	1,352	1,562
2013	3,004	1,147	2,288
2014	2,399	963	1,929
2015	3,085	1,394	2,217
2016	3,431	1,452	2,006
2017	4,040	2,266	2,334
2018	3,868	2,978	2,253
2019	7,883	3,580	4,408
2020	5,707	3,048	3,724
2021	8,552	5,374	5,113
Total	44,096	23,554	27,834

#The figures may not be related to the reports received in the year. According to BD, there were often reports of the same UBWs made by different people. Therefore, the number of inspections conducted may be less than the number of reports received. Moreover, if BD staff could find the necessary information in file records such as inspection reports and aerial photographs, they would not conduct site inspections.

*The figures may not be related to the reports received or inspections conducted in the year. Existing NTEHs with UBWs identified at different times in the year would only be counted once each year.

ENFORCEMENT AGAINST TYPE I UBWs

UBWs Constituting Obvious Hazard or Imminent Danger to Life or Property

4.7 BD's performance pledge for handling emergencies relating to buildings or building works in urban areas and new towns in the New Territories is to carry out an inspection within two hours upon receipt of a report. For emergencies relating to buildings or building works in other areas in the New Territories, BD has pledged to conduct an inspection within three hours. These performance pledges are applicable to UBWs in NTEHs. Between 2018 and 2021, BD's achievement rate was 100% each year.

4.8 Between April 2012 and December 2021, BD received a total of 39 reports of UBWs constituting obvious hazard or imminent danger to life or property, 35 of which were confirmed after BD's inspection as UBWs not constituting imminent danger. In two cases reported in 2012 and 2013 respectively, BD had to arrange immediate removal of UBWs by Government contractors without issuing a removal order. Two removal orders issued in 2016 had been complied with.

4.9 The numbers of reports of UBWs constituting obvious hazard or imminent danger to life or property received and removal orders issued by BD are set out as follows:

Table 5: Numbers of reports of UBWs constituting obvious hazard or imminent danger to life or property received and removal orders issued

Year	Reports of UBWs constituting obvious hazard or imminent danger to life or property	Number of cases in which UBWs constituting obvious hazard or imminent danger to life or property were identified	Removal orders issued
2012 (Since April)	3	1	0
2013	7	1	0
2014	4	0	0
2015	1	0	0
2016	6	2	2
2017	2	0	0
2018	8	0	0
2019	2	0	0
2020	5	0	0

Year	Reports of UBWs constituting obvious hazard or imminent danger to life or property	Number of cases in which UBWs constituting obvious hazard or imminent danger to life or property were identified	Removal orders issued
2021	1	0	0
Total	39	4	2

UBWs Under Construction or Newly Completed

4.10 As regards UBWs under construction, BD has pledged to conduct a site inspection within 48 hours upon receipt of a report, and the performance target is 99%. The overall performance in 2018, 2019, 2020 and 2021 was 99.8%, 99.8%, 98.3% and 98.9% respectively. BD indicated that the target was not met in 2020 and 2021 because of the prevalence of COVID-19.

4.11 Between April 2012 and December 2021, BD received a total of 5,250 reports of suspected UBWs under construction. The number of reports decreased from 706 cases in 2013 to 364 in 2021. According to BD, it had confirmed after conducting site inspections and checking relevant records (including aerial photographs provided by LandsD) that some reported UBWs were newly completed after 28 June 2011. UBWs under construction and those newly completed are types of UBWs warranting priority enforcement actions. For reported UBWs which were found to be neither UBWs under construction nor newly completed UBWs during BD's inspections, they would be handled in accordance with the enhanced strategy. Of the 606 removal orders that BD had issued against UBWs under construction, 147 (about 24.3%) remained outstanding as at the end of 2021. Of the 2,020 removal orders issued by BD against newly completed UBWs, 755 (about 37.4%) remained outstanding as at the end of 2021. Relevant statistics are set out in the following table.

Table 6: Numbers of reports of UBWs under construction and orders issued against UBWs under construction or newly completed and the compliance of such orders

Year	Number of reports of UBWs under construction	(a) Number of orders issued against UBWs under construction#	As at the end of 2021		(b) Number of orders issued against newly completed UBWs#	As at the end of 2021	
			Number of orders in column (a) that were complied with (in terms of percentage)	Number of orders in column (a) that remained outstanding (in terms of percentage)		Number of orders in column (b) that were complied with (in terms of percentage)	Number of orders in column (b) that remained outstanding (in terms of percentage)
2012 (Since April)	636	38	33 (86.8%)	5 (13.2%)	0	0 (0%)	0 (0%)
2013	706	220	194 (88.2%)	26 (11.8%)	39	34 (87.2%)	5 (12.8%)
2014	580	69	59 (85.5%)	10 (14.5%)	64	58 (90.6%)	6 (9.4%)
2015	569	52	42 (80.8%)	10 (19.2%)	143	115 (80.4%)	28 (19.6%)
2016	501	71	53 (74.6%)	18 (25.4%)	301	210 (69.8%)	91 (30.2%)
2017	545	47	21 (44.7%)	26 (55.3%)	278	167 (60.1%)	111 (39.9%)
2018	600	18	13 (72.2%)	5 (27.8%)	321	201 (62.6%)	120 (37.4%)
2019	437	53	24 (45.3%)	29 (54.7%)	277	156 (56.3%)	121 (43.7%)
2020	312	23	12 (52.2%)	11 (47.8%)	273	116 (42.5%)	157 (57.5%)
2021	364	15*	1 (6.7%)	7 (46.7%)	324^	64 (19.8%)	116 (35.8%)
Total	5,250	606*	452 (74.6%)	147 (24.3%)	2,020^	1,121 (55.5%)	755 (37.4%)

\# The figures may not be related to the reports in the year.

* Of the 15 removal orders issued against UBWs under construction in 2021, seven had a deadline for compliance which had not yet passed as at the end of 2021.

^ Of the 324 removal orders issued against UBWs newly completed in 2021, 144 had a deadline for compliance which had not yet passed as at the end of 2021.

ENFORCEMENT AGAINST TYPE II UBWs

Effectiveness of Large-Scale Operations

4.12 LandsD's List of Recognised Villages covers a total of 642 recognised villages in the Outlying Islands, North District, Sai Kung, Shatin, Tuen Mun, Tai Po, Tsuen Wan, Kwai Tsing and Yuen Long. Since 2012, BD has appointed consultants to conduct large-scale operations in about 29 recognised villages on average each year. As at December 2021, BD had completed preliminary inspections in 297 villages (296 of them being recognised villages), accounting for 46% of all recognised villages. Among those 48,287 village houses involved, first round targets were found in 1,707 village houses.

4.13 Between 2012 and 2021, the numbers of villages involved in BD's large-scale operations and village houses with first round targets identified are set out in the table below.

Table 7: Statistics on large-scale operations conducted by BD

Large-scale operations (Year)	Number of Target Villages	Number of village houses involved	Number of village houses with first round targets identified
2012	17	4,680	225
2013	41	6,958	278
2014	26	6,344	205
2015	16	5,792	163
2016	20	5,025	326
2017	32	5,132	332
2018	36	4,965	118^
2019	38	4,634	34^
2020	35	4,757	26^
2021	36	In progress	In progress
Total	297	48,287	1,707

^ Identification of first round targets was still in progress.

4.14 According to BD, of the 33,391 village houses inspected between 2012 and 2017, 1,529 (roughly 4.5%) were identified with first round targets. Village houses identified with first round targets among the village houses inspected accounted for a similar percentage between 2.8% and 6.5% each year during the same period. Hence, BD took the view that UBWs constituting serious contravention of the law and posing higher potential risks were generally under control or there was no significant increase in this type of UBWs. BD also indicated that the progress of the identification work in large-scale operations was affected by a number of factors including whether owners and occupants of village houses were cooperative. Moreover, the increasing number of public reports of UBWs in village houses, difficulty in inspecting villages due to obstruction, complexity of cases and the pandemic situation of COVID-19 also affected the progress of large-scale operations.

Removal Orders Issued against NTEHs of Four Storeys or Above

4.15 BD has categorised seven types of UBWs constituting serious contravention of the law and posing higher potential risks as first round targets (see **Table 1**). As at December 2021, BD had identified 1,707 villages houses with first round targets (see **Table 7**). Although BD has entered into the Building Condition Information System the details of removal orders regarding the types and numbers of UBWs found, it has not compiled any statistics on UBWs.

4.16 Between 2012 and December 2021, BD issued a total of 2,751 removal orders during large-scale operations, which included 1,978 orders issued against NTEHs of four storeys or above (with 1,629 against three-storeyed villages houses having addition of one or more storeys and 349 against NTEHs already having four or more storeys) and 773 orders issued against other types of UBWs. The figures on the removal orders that BD issued against village houses of four storeys or above are set out in the table below.

Table 8: Number of removal orders issued against village houses of four storeys or above and the compliance of such orders

Year	(a) Number of removal orders issued against village houses of 4 storeys or above	As at the end of 2021		(b) Number of removal orders issued against 3-storeyed village house having addition of one or more storeys	As at the end of 2021	
		Number of removal orders in column (a) that were complied with	Number of removal orders in column (a) that remained outstanding		Number of removal orders in column (b) that were complied with	Number of removal orders in column (b) that remained outstanding
2012	1	0	1	122	122	0
2013	7	4	3	62	55	7
2014	18	10	8	303	267	36
2015	10	5	5	210	160	50
2016	5	2	3	114	94	20
2017	11	1	10	103	71	32
2018	25	7	18	126	74	52
2019	108	2	106	172	52	120
2020	23	0	23	183	70	113
2021	141#	0	80	234*	41	85
Total	349#	31	257	1,629*	1,006	515

\# Of the 141 removal orders issued against village houses of four storeys or above in 2021, 61 had a deadline for compliance which had not yet passed as at the end of 2021.

* Of the 234 removal orders issued against three-storeyed villages houses having addition of one or more storeys in 2021, 108 had a deadline for compliance which had not yet passed as at the end of 2021.

4.17 In response to our draft investigation report, BD said it has recently conducted random checks on 30 village houses of four storeys or above, which had complied with the removal orders years ago. None of them were found to have erected new UBWs. BD considered that results of the random checks reflect that the enhanced strategy has been clearly effective in tackling UBWs that constitute serious contravention of the law and pose higher potential risks of building safety.

Compliance with Removal Orders in Large-Scale Operations

4.18 Between April 2012 and December 2021, BD identified 1,707 village houses with first-round targets during large-scale operations and issued a total of 2,751 removal orders [7], of which 1,480 (about 53.8%) were complied with. Moreover, BD instituted prosecutions in 431 cases against owners who failed to comply with removal orders.

OVERALL ENFORCEMENT

4.19 On deciding whether reported UBWs fall within the category of actionable UBWs under the enhanced strategy, BD will consider the information and evidence collected during investigation. As each case has its own merits and background, the difficulty in inspecting UBWs and gathering evidence would vary. The condition of UBWs may also be different. Moreover, before determining what enforcement actions should be taken, BD has to confirm with LandsD whether a certificate of exemption has been or will be issued to the village house concerned as well as obtain information about the site. Hence, BD has not established any performance pledge for issuance of removal orders.

4.20 Between April 2012 and December 2021, BD issued 5,384 removal orders against UBWs in NTEHs. As at the end of December 2021, 3,057 (about 56.8%) of the removal orders were complied with and 2,016 (about 37.4%) remained outstanding whilst the deadline for removal had passed. The figures on removal orders issued by BD to owners of NTEHs with UBWs and the compliance situation are listed in the table below.

Table 9: Number of removal orders issued by BD and the compliance of such orders

Year	Number of removal orders issued	As at the end of 2021	
		Number of orders complied with (in terms of percentage)	Number of outstanding orders whose deadline for removal had passed (in terms of percentage)
2012 (Since April)	161	155 (96.3%)	6 (3.7%)
2013	328	287 (87.5%)	41 (12.5%)
2014	454	394 (86.8%)	60 (13.2%)
2015	415	322 (77.6%)	93 (22.4%)

7 BD might issue a number of removal orders against one single village house because some village houses and the associated UBWs might involve land of multiple owners.

Year	Number of removal orders issued	As at the end of 2021	
		Number of orders complied with (in terms of percentage)	**Number of outstanding orders whose deadline for removal had passed (in terms of percentage)**
2016	529	389 (73.5%)	140 (26.5%)
2017	572	364 (63.6%)	208 (36.4%)
2018	573	362 (63.2%)	211 (36.8%)
2019	802	355 (44.3%)	447 (55.7%)
2020	667	280 (42.0%)	387 (58.0%)
2021	883*	149 (16.9%)	423 (47.9%)
Total	5,384*	3,057 (56.8%)	2,016 (37.4%)

Of the 833 removal orders issued in 2021, 311 had a deadline for removal which had not yet passed as at the end of 2021.

4.21 BD explained that its Building Condition Information System is equipped with a "to-do list" function to automatically send timely reminders to staff, requiring them to follow up on cases. BD's senior professional staff regularly monitor outstanding cases by checking the Building Condition Information System and report to the Chief Officer/Village Houses on a monthly basis. BD has set up a Progress Monitoring Committee, comprising staff of different ranks including the directorate, to hold regular meetings for setting work targets and drawing up timetables for clearance of backlog cases of non-compliance, so as to monitor the enforcement actions against UBWs in NTEHs, which includes monitoring the progress of follow-up actions on reports and outstanding removal orders.

4.22 In handling NTEH owners' non-compliance with removal orders, BD sets work targets on removal of UBWs each year, giving priority to long overdue cases. Moreover, between April 2012 and 2021, BD brought a total of 1,383 charges against non-compliance with removal orders. Of those prosecutions, there were 972 convictions and the sum of fine was $9.25 million. The average fine for each conviction was about $9,500, and the highest fine among individual cases was $64,100, with $24,100 being daily fine. There were nine cases (involving three NTEHs) in which imprisonment was imposed, ranging from suspended sentence to eight months' imprisonment. The figures on BD's prosecutions for non-compliance with removal orders and the penalties imposed by the Court are set out in the table below.

Table 10: Number of BD's prosecutions for non-compliance with removal orders and the penalties imposed by the Court

Year	Number of prosecutions instituted*	Number of convictions obtained#	Number of acquittals#	Number of cases where summons was issued but trial hearings were pending#	Total amount of fine (the amount in brackets refers to the average fine of each conviction) (dollar)	Cases in which imprisonment was imposed
2012 (Since April)	59	43	0	0	314,479 (7,313)	0
2013	80	52	3	0	279,846 (5,382)	0
2014	79	47	2	0	356,772 (7,591)	0
2015	97	93	6	0	1,165,140 (12,528)	0
2016	201	93	3	1	1,172,398 (12,606)	2 (involving 2 removal orders and 2 defendants, each being sentenced to 2 months' imprisonment suspended for 2 years)
2017	230	167	1	7	1,447,050 (8,665)	2 (involving 2 removal orders and 2 defendants, each being sentenced to immediate imprisonment for 2 months and 3 weeks)
2018	153	127	1	6	1,244,076 (9,796)	0
2019	161	125	0	6	948,570 (7,589)	2 (involving 2 removal orders and 2 defendants, each being sentenced to 12 weeks' imprisonment)
2020	130	89	0	11	962,920 (10,819)	1 (a sentence of 2 months' imprisonment suspended for 18 months)
2021	193	136	0	64	1,363,820 (10,028)	2 (involving 2 removal orders

Year	Number of prosecutions instituted*	Number of convictions obtained#	Number of acquittals#	Number of cases where summons was issued but trial hearings were pending#	Total amount of fine (the amount in brackets refers to the average fine of each conviction) (dollar)	Cases in which imprisonment was imposed
						and 2 defendants, each being sentenced to 8 months' imprisonment)
Total	1,383	972	16	95	9,255,071 (9,522)	9

* The cases might not involve removal orders issued during the year. BD has not compiled statistics on cases "pending trials" each year.

\# The cases might not involve removal orders issued and prosecutions instituted during the year.

4.23 In case of continued non-compliance with the removal order after prosecution, BD may continue to prosecute the non-compliant owners until their compliance. Between April 2012 and 2021, there were 972 convictions with 86 (8.8%) of them being reconvictions. The average fine upon reconviction for persistent non-compliance was about $13,400. The figures on persistent non-compliant owners being prosecuted again by BD are listed in the table below.

Table 11: Number of cases in which persistent non-compliant offenders were prosecuted again by BD and the penalties imposed by the Court

Year	(a) Number of prosecution cases	Number of column (a) cases in which the offender was prosecuted again	(b) Number of cases where the offender was convicted*	(c) Number of column (b) cases involving reconvictions	Total amount of fine in column (c) cases (the amount in brackets refers to the average fine of each conviction) (dollar)	Number of column (c) cases in which imprisonment was imposed
2012 (Since April)	59	0	43	0	0 (0)	0
2013	80	2	52	0	0 (0)	0
2014	79	2	47	1	10,000 (10,000)	0
2015	97	2	93	6	59,305 (9,884)	0

Year	(a) Number of prosecution cases	Number of column (a) cases in which the offender was prosecuted again	(b) Number of cases where the offender was convicted*	(c) Number of column (b) cases involving reconvictions	Total amount of fine in column (c) cases (the amount in brackets refers to the average fine of each conviction) (dollar)	Number of column (c) cases in which imprisonment was imposed
2016	201	18	93	10	251,688 (25,169)	2
2017	230	19	167	10	126,410 (12,641)	2
2018	153	21	127	17	190,710 (11,218)	0
2019	161	16	125	15	213,200 (14,213)	2
2020	130	21	89	11	150,480 (13,680)	1
2021	193	33	136	16	150,980 (9,436)	2
Total	1,383	134	972	86	1,152,773 (13,404)	9

* The cases might not involve prosecutions instituted during the year.

IMPLEMENTATION OF REPORTING SCHEME

Confirmation of Reports Submitted Through Reporting Scheme and the First Five-Year Reporting Cycle

4.24 The Reporting Scheme commenced on 1 April and ended on 31 December 2012. During the period, BD received a total of 18,034 reports on UBWs and related safety certification and conducted audit checks on 1,787 of them. The audit checks included carrying out on-site inspections, taking measurements and conducting structural assessment on the UBWs reported. Eventually, BD confirmed 12,865 reports with related safety certification during the first five-year reporting cycle, involving 10,326 village houses and 25,649 UBWs in total. Rejected UBWs were put on record.

4.25 The categories and numbers of reported UBWs that were confirmed by BD are set out in the table below.

Table 12: Categories and numbers of UBWs reported under the Reporting Scheme

Types of UBWs	Number (approximate)
Enclosed balcony constructed of steel or aluminium structural elements, metal plates or glass	2,929
Enclosed rooftop structures constructed of reinforced concrete, masonry or other materials, with a coverage of not more than 50% of the roofed-over area of the main building	6,803
Unenclosed rooftop structures constructed of steel or aluminium structural elements	6,598
Ground floor extension constructed of reinforced concrete, masonry or other materials, whether or not the extension has internal access to the main building	3,967
Partition wall exceeding 150mm in thickness erected between the balconies of two adjoining NTEHs	17
Canopy projecting from the external wall of the main building, except the green and amenity facilities allowed to be provided	1,432
Ground floor canopy with pillars	2,769
Metal supporting rack for air-conditioning unit and lightweight air-conditioner hood projecting from the external wall of the main building, except the green and amenity facilities allowed to be provided	629
Signboard projecting from the external wall of the main building	29
Wall signboard mounted on the external wall of the main building, except the green and amenity facilities allowed to be provided	22
Signboard erected on the rooftop	9
Other UBWs such as window hood, fence and decoration on external walls	445
Total	25,649

Second Safety Inspection and Cycle of Certification under Reporting Scheme

4.26 When the Reporting Scheme was first implemented, many owners' submission did not include all the necessary information and they had to provide supplementary information. Hence, the second cycle of certification for each confirmed report started from five years after the issue date of the confirmation letter. During the second safety inspection and cycle of certification, the owner concerned should appoint a qualified person to conduct another safety inspection on the reported UBWs which had been confirmed by BD and on their effect on the parent structures and then submit safety certifications to BD. Otherwise, BD will cancel the status of the UBWs as reported UBWs and take respective actions according to the enhanced strategy.

4.27 As at December 2021, BD had received a total of 11,801 safety certifications for second safety inspections and cycle of certification. Compared with the 12,865 reports confirmed in the first cycle (see **para. 4.24**), over 90% of the NTEH owners whose reports had been confirmed under the Reporting Scheme continued to participate in the second cycle of certification. During the second cycle, BD had accepted 7,716 reports involving 14,756 UBWs and rejected 260 reports involving 422 UBWs[8]. The remaining 3,825 reports were still being processed. 774 safety certifications were overdue but the owners concerned had yet to submit the safety certifications for the second reporting cycle. BD had sent written reminders to those owners, requiring them to submit the safety certifications. There were 257 reports, the safety certifications of which had yet to be due. Besides, there were 33 reports involving altered UBWs that no longer met the criteria for the Reporting Scheme or UBWs that had already been removed. The owners concerned did not intend to report them again. In case the owners fail to submit the second safety certification before the deadline without reasonable excuse, BD would take it that the owners no longer have the intention to join the second cycle of the Reporting Scheme. BD would notify them in writing that the status of the UBWs as reported UBWs would be cancelled and the Department would take enforcement action in accordance with the enhanced strategy.

DIFFICULTIES IN TAKING ENFORCEMENT ACTIONS

4.28 BD explained that as construction of NTEHs does not require its prior approval and consent, it does not possess the relevant building plans or construction records. In determining whether certain building works are UBWs or located in private lots, BD relies on information provided by LandsD and has to visit the site to take measurements. Hence, it would take BD more time to decide on the necessary enforcement action.

4.29 BD also pointed out that the annual large-scale operations involve a huge number of more than 4,000 village houses. NTEHs are sparsely located and there is a lack of construction records. The information relating to land and ownership could be very complicated. Besides, given the considerable number and variety of UBWs, consultants have to conduct preliminary inspections systematically to investigate the number of villages houses and identify those with first round targets before conducting detailed surveys and investigations on target village houses to gather adequate evidence for enforcement. There were occasions where during large-scale operations BD staff and consultants were obstructed by villagers when entering villages for inspections or for serving orders. They had to seek help from village representatives, HYK and even the Police, leading to delays in investigation

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[8] Cases where BD cancelled the status of UBWs as reported UBWs in the second reporting cycle may involve the following scenarios: although the reported UBWs remained the same as in the first reporting cycle, they were found to be not fulfilling the requirements for reporting. For example, site inspections revealed that the rooftop structures covered more than 50% of the roofed-over area of the main building, or the reported UBWs were different from what was reported at the first time (e.g. they were altered or rebuilt such that the UBWs became entirely or partially newly completed UBWs).

work and enforcement actions. While BD may enter a house in the presence of a police officer to carry out inspections after obtaining a warrant from the Court's pursuant to the requirements and procedures under section 22 of BO, the process takes time. BD would step up its efforts in explaining the enhanced strategy to villagers to appeal for their cooperation.

4.30 Meanwhile, BD has since 2017 requested its consultants to identify first round targets with the assistance of drones under a pilot. Some officers of BD's Village Houses Section have completed recognised training courses on using drones and obtained a permit from the Civil Aviation Department to operate drones. Currently, BD is planning for more extensive use of drones in large-scale operations to enhance and expedite inspections, identification and evidence gathering with a view to speeding up such operations pragmatically.

4.31 Moreover, as most first round targets were rooftop structures or village houses of four storeys or above, their removal requires sophisticated techniques and entails occupants' moving out of the village houses. Hence, BD might need more time to discuss with the owners in order to help them comply with the removal orders. Besides, BD has been aware of the inadequate understanding about UBWs and even ignorance of the Department's regulation and enforcement among some village house owners. As such, BD has to continue its efforts in publicity and public education through various channels to enhance efficiency in enforcement and achieve greater deterrent effect.

4.32 During the implementation of the enhanced strategy, BD has found that there are many more UBWs in NTEHs and complicated cases than expected. More than 18,000 reports have been received under the Reporting Scheme, and the number of reports on UBWs increased rapidly from 2,100 in 2012 to 8,500 in 2021. Given the existing resources, BD has been working hard to improve the effectiveness of its enforcement by flexible manpower deployment and streamlining of the workflow. For example, in order to give priority to actionable UBWs, BD streamlined its work procedures for audit checks under the Reporting Scheme in early January 2022 so as to expedite the handling of more than 12,000 reports and safety certification received in each five-year cycle.

ANNUAL WORK TARGETS

4.33 BD will keep up the implementation of the enhanced strategy and has established the following annual work targets for the Village Houses Section:

(a) handle about 6,000 reports of UBWs and 180 cases of defective/dangerous village houses and conduct large-scale operations in about 35 villages covering an estimated 4,000 NTEHs;

(b) serve some 800 statutory orders;

(c) handle about 100 cases of appeal against orders issued; and

(d) bring some 150 prosecutions for non-compliance with removal orders.

5

CASE STUDIES

5.1 This Office has randomly selected 12 cases in which BD had issued removal orders. Below are eight of these cases that demonstrate different problems in the enforcement of removal orders.

CASE (1): COMPLIANCE WITH THE REMOVAL ORDER TOOK MORE THAN EIGHT YEARS

5.2 In June 2012, BD received a report about the works in progress at a village house in Yuen Long, which involved unauthorised erection of ground floor canopy and rooftop structures. BD's consultant carried out an inspection within 48 hours and found abandoned materials on the site as well as newly erected structures on the ground floor and rooftop. The consultant promptly issued an advisory letter, reminding the persons concerned not to carry out UBWs or BD would issue suspension or removal orders. After examining the consultant's inspection report and the information about the village house, BD considered that the UBWs did not fulfil the criteria for exemption under BO(ATNT)O. Hence, BD issued an advisory letter to the owner in September 2012 to require immediate suspension of the UBWs. Upon receiving LandsD's confirmation that no certificate of exemption had been or would be issued, BD issued a removal order to the owner in March 2013, requiring the removal of the UBWs within 60 days. Having learned in June 2013 that the address on the removal order was wrong, BD issued another order in November 2013 to substitute the previous one.

5.3 After the deadline for the removal order had passed, the consultant inspected the village house at the end of January 2014 and found that the UBWs remained. In July 2016, BD conducted a site inspection and found that the removal order was still outstanding. Later in August, BD issued a warning letter to the owner, indicating that it would consider instituting a prosecution for non-compliance with the removal order. In September, HYK wrote to BD on behalf of the owner and applied for an extension for compliance with the removal order.

5.4 It was not until July 2021 that BD conducted another site inspection, during which the UBWs were found to have remained in the village house. In August 2021, having noticed the change in the village house's ownership, BD issued

a new removal order in December to substitute the one issued in November 2013. In January 2022, the owner notified BD that the UBWs in question had been removed.

CASE (2): THE OWNERS HAD NOT ONLY FAILED TO COMPLY WITH THE REMOVAL ORDERS BUT ALSO CARRIED OUT MORE UBWs

5.5 Two owners had never complied with the removal order against their four-storey village house ("Village House A") in Tai Po. In February 2015, they were reported to have started building another four-storey village house ("Village House B") adjacent to Village House A. BD's consultant carried out an on-site inspection within 48 hours and immediately issued an advisory letter, reminding the owners not to carry out UBWs or BD would issue suspension or removal orders. After examining the consultant's inspection report and the information about the village houses, BD considered that the UBWs did not fulfil the criteria for exemption under BO(ATNT)O. Hence, BD issued another advisory letter to the owners in May 2015, requiring immediate suspension of the relevant works. Upon receiving LandsD's confirmation that no certificate of exemption had been or would be issued for the village house, BD issued a removal order to the owners in December 2015, requiring the removal of the UBWs within five months. In June 2016, BD sent the removal order to LR for registration.

5.6 As the owners had not removed the UBWs in Village House A and Village House B, BD brought four prosecutions against the owners between July 2016 and October 2021. Regarding the first prosecution, the two owners were each fined $41,700 and sentenced to two months' imprisonment, which was suspended for two years. Regarding the second prosecution, the two owners were sentenced to immediate imprisonment for a term of two months and three weeks. As regards the third and fourth prosecutions, one of the owners[9] was sentenced to 12 weeks' and 8 months' imprisonment respectively.

CASE (3): PROSECUTION WAS FOLLOWED BY YEARS OF INACTION

5.7 In April 2011, BD received from LandsD a referral about a rooftop structure under construction in a village house in Yuen Long. After confirming that the structure was under construction on the rooftop, BD issued an advisory letter to the owner in July, requiring an immediate halt to the construction. At the end of July, BD issued a removal order to the owner, demanding that the rooftop structure be demolished within 30 days.

5.8 In February 2012, BD's consultant conducted an inspection and found that the rooftop UBWs were yet to be removed. In June, BD prosecuted the owner. In May 2013, the owner pleaded guilty in Court and was fined $15,000.

[9] Another owner was absent and has been wanted by the Court.

5.9 In August 2014, BD noticed a change in the ownership of the village house in the land registration records. In September 2015 and April 2016, BD again received complaints about UBWs on the rooftop of the village house. In December 2016, BD conducted an inspection and issued a removal order to the new owner, requiring the removal of the rooftop UBWs within 180 days. During an inspection in November 2017, BD found that the UBWs remained and then wrote to the owner indicating that it would consider instituting a prosecution.

5.10 It was not until December 2021 when this Office requested files from BD that the Department conducted an inspection regarding the case and initiated prosecution proceedings. The two owners pleaded guilty in Court in July 2022 and were each fined $24,600.

CASE (4): FAILING TO LOCATE THE ESTATE ADMINISTRATOR OF A VILLAGE HOUSE'S OWNER IN A TIMELY MANNER

5.11 In 2012, BD's consultant conducted a large-scale operation in a village in Tuen Mun and in October submitted a detailed survey report about a four-storey village house to BD. Suspecting that the village house owner had passed away, BD staff enquired of the Immigration Department about the owner's information and confirmed the owner's death. Nevertheless, there was no change in the owner's information in LR. In accordance with its internal guidelines, in September 2013, BD published the removal order in the gazette and posted it at the site, requiring the owner to remove the UBWs within five months.

5.12 When BD staff conducted a site inspection in March 2015, they found that the village house was rented out and the tenant said the rent was paid to a property agent. During another inspection in October 2015, BD found that the demolition works were yet to commence. Between April and November 2016, BD checked the information on the estate administrators concerned at the Probate Registry. In December 2016, BD wrote to two estate administrators (hereinafter referred to as "Administrator A" and "Administrator B"), requiring their compliance with the removal order. However, Administrator A informed BD that he was only a temporary estate administrator and suggested that the Department contact Administrator B. In July 2019, BD instructed its consultant to conduct another site inspection.

5.13 In July 2020, BD requested the Rating and Valuation Department ("RVD") to provide information on the person who paid the rates of the village house. In August, RVD replied that the rates were paid by Administrator B and provided the latter's name and address. In view of the information collected, BD issued a removal order to Administrator A and Administrator B in October 2021. In November, Administrator B informed BD that removal of the UBWs was arranged.

CASE (5): LARGE-SCALE OPERATIONS LAGGED BEHIND SCHEDULE

5.14 In 2013, BD's consultant conducted a large-scale operation in a village in Yuen Long, during which a four-storey village house was identified as a first round target. Subsequent to an inspection in October 2013, the consultant submitted a detailed survey report to BD in April 2014. In December 2014, BD issued a removal order to the owner, requiring removal of the UBWs within five months, but the owner said demolishing the UBWs would affect the structure of both the subject village house and the adjoining one because the external walls of the houses were closely built. (Subsequently, BD conducted a site inspection and considered that demolishing the UBWs would not affect the structure of the houses.) In January 2015, BD received the consultant's report confirming the successful posting of the removal order, which was then sent to LR for registration in April.

5.15 In October 2017, BD commenced the procedures for prosecution against the owner for non-compliance with the removal order. In November, the owner wrote to BD explaining that it had applied to LandsD for redeveloping the village house and requested that BD suspend its enforcement action. In December, BD checked with LandsD the progress of the redevelopment application regarding the village house. In October 2020, LandsD replied that the application for redevelopment was approved in September 2019.

5.16 In July 2021, BD informed the owner that it would inspect the village house again and consider instituting a prosecution if the demolition was not completed. In December, BD staff conducted a site inspection and found that the removal order had been complied with and the fourth storey of the village house had been removed.

CASE (6): INEFFECTIVE COMMUNICATION WITH LANDsD

5.17 In 2014, BD's consultant conducted a large-scale operation in a village in Yuen Long. In July 2015, the consultant submitted to BD a detailed survey report on a four-storey village house in the village. In November, BD issued a removal order, requiring removal of the UBWs within five months. In January 2016, the owner informed BD via HYK that an application for redevelopment of the village house had been submitted to LandsD in December 2015. Hence, BD enquired of LandsD in February 2016 about the status of the redevelopment application. Within the month, LandsD replied that it had received the application.

5.18 In August 2016, BD made further enquiries to LandsD about the status of the redevelopment application in order to assess whether the owner concerned had actual plans for redeveloping the village house. In December, the owner told BD that LandsD was processing the redevelopment application, and BD asked him to provide relevant documentary proof.

5.19 In September 2020, BD checked with LandsD again the status of the redevelopment application. In October, LandsD replied that the application was approved in January 2017. BD's site inspection in July 2021 confirmed that the whole village house had been demolished.

CASE (7): THE OWNER MISTAKENLY BELIEVED THAT BD HAD TACITLY APPROVED NON-COMPLIANCE WITH THE REMOVAL ORDER

5.20 In June 2013, BD received a report about UBWs in progress on the ground floor and rooftop of a village house in Yuen Long. Within 48 hours, BD's consultant conducted a site inspection and found works in progress on the ground floor and rooftop of the village house. The consultant then issued an advisory letter, reminding the person concerned not to carry out UBWs or BD would issue suspension or removal orders. After examining the consultant's inspection report and the information about the village house, BD considered that the structures did not fulfil the criteria for exemption under BO(ATNT)O. In November 2013, BD issued advisory letters to the owners of the ground floor and the second floor with rooftop, requiring immediate suspension of the works. In December 2014, BD issued removal orders to the owners, requiring demolition of the structures built on the ground floor and rooftop within 30 days. In January 2015, BD's Village Houses Section received from the consultant the record of posting of the removal orders and in June 2016 the Section sent the orders to LR for registration.

5.21 In June 2016, BD issued warning letters to the owners of the ground floor and the second floor with rooftop, indicating that the Department was considering bringing prosecutions against them for non-compliance with the removal orders. In July, the owner of the ground floor informed BD in writing that he was discussing the matter with LandsD and asked BD to suspend the enforcement of the removal order. BD did not respond at that time.

5.22 In January 2021, BD did a land search and found that the ownership of the second floor with rooftop changed in 2018 (but the land records did not show the removal order of December 2014[10]). In July 2021, BD inspected the village house and found that the UBWs on the rooftop remained, occupying even more space, and the UBWs on the ground floor also remained. In December, BD issued a removal order to the new owner of the second floor and a warning letter to the owner of the ground floor, indicating that BD was considering instituting a prosecution and the owner's previous application for extending the deadline for compliance was rejected. Within the month, the owner of the ground floor enquired of BD about the content of the order, saying that he thought the matters were over. After BD had explained the situation, the owner concerned said the UBWs would be demolished as soon as possible. In January 2022, BD inspected the village house

[10] BD explained to this Office that its staff had only sent the order issued against the UBWs on the ground floor to LR for registration but had left out the order issued against the UBWs on the rooftop.

and found that the UBWs on the ground floor had been removed.

CASE (8): LENGTHY PROCESS OF INSTITUTING PROSECUTIONS

5.23 After launching a large-scale operation in a village in Shatin, BD assigned a consultant to inspect a village house in September 2016. During the month, the consultant inspected the house and found UBWs on the ground floor. In December 2016, BD issued a removal order to the owner concerned, demanding removal of the UBWs on the ground floor within 180 days. In March and April 2017, the owner lodged an appeal with the Appeal Tribunal, Buildings Ordinance but was rejected on the grounds that the time for appeal had lapsed.

5.24 During the inspections in July and October 2017, the consultant found that the UBWs on the ground floor of the village house remained. Hence, BD wrote to the owner in November, indicating that it was considering instituting a prosecution. In December, the Village Houses Section suggested that the Legal Services Section institute a prosecution. In January 2018, the owner requested that BD extend the deadline for removing the UBWs. In February, BD rejected the owner's application for extending the deadline for compliance with the removal order.

5.25 In September 2018, the Legal Services Section requested that the Village Houses Section inspect the village house again. During the site inspection on 10 December, the Village Houses Section found that the UBWs remained and on the following day informed the Legal Services Section of its finding.

5.26 In November 2019, the Legal Services Section informed the Village Houses Section that it had issued a summons to the owner concerned, requiring the owner to appear in Court to take plea on 11 December. Eventually, the owner pleaded guilty in Court in July 2020 and was fined $7,050.

5.27 BD inspected the village house in July and December 2021 and found that the UBWs were yet to be removed. In February 2022, the Village Houses Section suggested that the Legal Services Section prosecute the owner again.

6

COMMENTS AND RECOMMENDATIONS

OVERVIEW

6.1 UBWs in NTEHs has been a long-standing problem. In the past, the Government's enforcement policy targeted only UBWs constituting obvious hazard or imminent danger to life or property and those under construction. In April 2012, the Government implemented the enhanced strategy (**Chapter 3**) to extend the scope of actionable UBWs to include newly completed UBWs and existing ones not posing imminent danger but constituting serious contravention of the law (i.e. first round targets). Meanwhile, through the Reporting Scheme, the Government collects information on existing UBWs constituting less serious contravention of the law and ensures their safety for formulation of progressive enforcement plans.

6.2 BD is the main authority for implementing the enhanced strategy. Meanwhile, LandsD plays a supporting role by providing relevant information to BD and takes lease enforcement actions against UBWs constituting imminent danger or those outside the ambit of BD.

6.3 The Government has shown the determination to curb UBWs in NTEHs by formulating the enhanced strategy and establishing the Village Houses Section under BD. Hence, members of the public would expect the Government to be able to curb the proliferation of UBWs in NTEHs and proactively eliminate existing UBWs involving serious contravention of the law. Ten years had passed since the implementation of the enhanced strategy. Our investigation findings reveal the following inadequacies on the part of BD and room for improvement in LandsD's collaboration with BD.

OUR COMMENTS

Statistics on UBWs Not Compiled

6.4 In the past, the Government had not conducted any comprehensive

surveys or compiled statistics on NTEHs or UBWs in those houses, hence the absence of the total number of NTEHs in Hong Kong and the overall statistics on UBWs in NTEHs. Although the prevalence of UBWs in NTEHs is a general understanding of the community, there remain no figures on the actual quantity, types and distribution of UBWs. In the absence of statistics on UBWs, it is difficult to compare the overall situation of UBWs in NTEHs before and after the implementation of the enhanced strategy, and hence it is not possible to assess the post-implementation effectiveness of the strategy in the past ten years in a more comprehensive manner.

6.5 Currently, BD, in the course of follow-up on reports of UBWs or large-scale operations, maintains figures on the number of NTEHs with UBWs found and the number of removal orders issued. The content of removal orders (comprising the types and numbers of UBWs concerned) will also be recorded on the Building Condition Information System (see **paras. 4.6 and 4.15**). Nevertheless, BD has not made use of the aforesaid information to compile statistics on UBWs. On the other hand, through the Reporting Scheme, BD collected detailed information on existing UBWs constituting less serious contravention of the law and posing lower potential risks and compiled statistics on their types and quantities, though they are not subject to BD's enforcement (see **Table 12 under para. 4.25**). BD, however, has not compiled statistics on UBWs subject to higher priority of enforcement actions for analysis.

6.6 We consider that without statistics on UBWs, it is difficult for BD to make systematic assessment of the effectiveness of the enhanced strategy in tackling UBWs in NTEHs and the overall changes after its implementation. We understand that given resource considerations, the Government might not be able to conduct a holistic survey to collect statistical figures on the total number of UBWs in NTEHs in Hong Kong. Nevertheless, BD should still make good use of the information collected from its follow-up and enforcement actions against UBWs. We recommend that BD compile statistics on UBWs (including the types and numbers of UBWs involved in removal orders and of those subsequently removed) for analysis purposes. While the statistical information may not cover all NTEHs in the territory, the cumulative data can still provide an objective basis for BD's review of its enforcement actions.

6.7 In response to our draft investigation report, BD said a comprehensive assessment on the number of NTEHs and the total number of UBWs already commenced, including random inspections on a certain number of NTEHs and compilation of statistical figures on types and numbers of UBWs. In the course of the assessment, BD may concurrently examine the statistics on UBWs proposed to be compiled above.

Failing to Curb the Proliferation of UBWs

6.8 Between April 2012 and December 2021, BD issued 5,384 removal

orders against UBWs in NTEHs (see **para. 4.20**), among which 2,626 were against UBWs under construction or newly completed (see **para. 4.11**), accounting for 48.8% of the total number of removal orders issued, while the remaining were issued during large-scale operations, which included existing UBWs identified as first round targets.

6.9 According to the enhanced strategy, BD would take immediate enforcement actions against UBWs under construction or newly completed to curb the proliferation of UBWs. Although BD pointed out that the past decade saw a decline in reports of suspected cases of UBWs under construction (see **Table 6 under para. 4.11**), the compliance status of removal orders and the cases we studied revealed that BD's enforcement actions had been ineffective in curbing the proliferation of UBWs. Some UBWs under construction subsequently became newly completed UBWs and continued to exist. **Table 6** (see **para. 4.11**) shows that between April 2012 and 2021 BD issued 606 removal orders against UBWs under construction. Of those orders, 147 (about 24.3%) remained outstanding as at the end of 2021, among which about 68% were issued in or before 2018, and some of them were issued eight to ten years ago, reflecting the long existence of the UBWs concerned. Similarly, of the 2,020 removal orders issued by BD against newly completed UBWs, 755 (about 37.4%) remained outstanding as at the end of 2021, among which 47.8% were issued in or before 2018.

6.10 In Cases (1), (2) and (7), BD managed to arrange site inspections by its consultants within 48 hours after receiving the reports of UBWs under construction. Nevertheless, BD subsequently failed on its part to stop promptly the construction of the UBWs in question, which ultimately became newly completed ones. In those cases, it took BD nine to 18 months to issue a removal order after the consultant's inspection (see **paras. 5.2, 5.5 and 5.20**), which was an obvious failure to meet the objective of taking "immediate" enforcement action. BD's failure to take prompt enforcement actions has in a way encouraged non-compliant owners to delay fulfilling their legal responsibilities.

6.11 We understand that even when UBWs under construction subsequently become newly completed ones, they still fall into the category of actionable UBWs subject to priority enforcement actions. Besides, not all works in progress would be categorised as UBWs. Nevertheless, if BD could be decisive in its enforcement when the UBWs are still under construction and immediately demand a halt to the works instead of requiring removal after completion, the owner would more likely remove the UBWs. BD's performance pledge in handling UBWs under construction is to arrange a site inspection within 48 hours upon receipt of a report of UBWs. In the past few years, BD generally met the pledge (see **para. 4.10**). Although BD has drawn up internal targets for taking follow-up actions against UBWs under construction such as the time frame for drafting and issuing removal orders, some work procedures (such as obtaining information from LandsD and LR after conducting site inspections, issuance of advisory letters and conducting further inspections after issuing advisory letters) are not included.

6.12 In our view, BD should review the existing guidelines and set clearer internal targets for processing tasks other than site inspections for compliance by its staff, so as to effectively combat UBWs under construction, thereby meeting the policy objective of curbing the proliferation of UBWs.

6.13 BD should also explore streamlining the enforcement procedures for tackling UBWs under construction to expedite enforcement and demonstrate its determination to curb UBWs. We are pleased to note that after the launch of our investigation, BD and LandsD have reached a consensus where as long as a case fulfils certain criteria, BD is no longer obligated to consult LandsD whether the latter has issued or will issue a certificate of exemption. BD reckoned that this new arrangement could substantially reduce the number of cases warranting consultation with LandsD, thereby enhancing work efficiency. We expect BD will continue to explore appropriate measures to speed up enforcement.

Slow Progress of Large-Scale Operations

6.14 Since April 2012, BD has engaged consultants to carry out large-scale operations in a number of target villages in the New Territories each year, with an aim to enforce against existing UBWs not posing imminent danger but constituting serious contravention of the law and posing higher potential risks (i.e. UBWs which are first round targets). As at the end of December 2021, BD completed inspections of about 46% of recognised villages only (see **para. 4.12**). According to BD's latest work targets, the Village Houses Section intends to conduct large-scale operations in about 35 villages each year (see **para. 4.33**). It is expected that BD will need another 10 years to complete inspections of all recognised villages in Hong Kong.

6.15 BD's consultants will carry out preliminary inspections in target villages, followed by detailed surveys on individual NTEHs with first round targets. The consultants are required to submit various reports and documents to BD in accordance with the schedule set out in the consultancy agreement (see **para. 3.18**). Table 7 (see **para. 4.13**) reveals that as at 2021, the large-scale operations launched in 2018 remained at the stage of identifying NTEHs with first round targets. The progress was far behind the requirement of completing preliminary inspections within 8 weeks (see **para. 3.18**) under the consultancy agreement. In Case (5), the consultant took nearly six months to complete the detailed survey report after inspecting the village house (see **para. 5.14**). In Cases (4) and (5), it took BD one year and eight months respectively to issue a removal order after receiving the detailed survey reports from the consultants (see **paras. 5.11 and 5.14**). These cases reflect BD's lengthy preparation for the issuance of removal orders, not to mention its subsequent enforcement work.

6.16 Moreover, when studying BD's cases, we noticed that its consultants are required to submit various reports and documents to BD from time to time and the Department will give responses after vetting. In our opinion, given that several thousand of village houses are to be inspected each year, such frequent and

substantial exchange of physical documents between BD and its consultants inevitably affects their work efficiency.

6.17 We understand that, as pointed out by BD, each year's large-scale operations involve more than 4,000 villages houses scattered in different areas and with complicated land titles, making it difficult to conduct investigations. In our view, in order to cope with these challenges, BD should review the existing arrangements for consultants' submission of work reports regarding large-scale operations and proactively identify areas for streamlining (such as more extensive use of electronic submission of reports), as well as explore measures to expedite the vetting of consultants' reports so as to speed up the issuance of removal orders. Meanwhile, BD should continue to monitor the performance of consultants despite the complexity of large-scale operations. In case of unsatisfactory performance, BD should impose an appropriate penalty on the consultant concerned.

Lack of Proactive Follow-up on Cases

6.18 Our case studies revealed BD's failure to take active follow-up actions on UBWs in NTEHs with years of inaction. In Case (1), the consultant found during an inspection that the UBWs in question remained after the deadline for removal had passed. It was not until two years later that BD inspected the village house again, and it took the Department another five years to conduct the next inspection (see **paras. 5.3 and 5.4**). In Case (3), the owner pleaded guilty to non-compliance in Court. BD later learnt of a change in ownership of the village house concerned and it took the Department more than two years to issue a removal order to the new owner. BD subsequently issued a warning letter to the new owner but it initiated the prosecution proceedings only four years later (see **paras. 5.8-5.10**).

6.19 In Case (4), BD was aware of the owner's death before issuing the removal order. Given that the village house was rented out and there was rent income, naturally BD should have considered locating the estate administrators concerned (see **para. 5.12**). However, it was not until more than two years had passed after the issuance of the removal order that BD staff started to check the information on the estate administrators. BD did not take active steps to follow up on the case after issuing the removal orders to the estate administrators (see **para. 5.12**). In Case (8), after the Village Houses Section made a proposal to the Legal Services Section for instituting a prosecution, it took the latter nearly two years to issue a summons to the owner (see **paras. 5.24-5.27**).

6.20 BD's failure to take timely action after issuing a removal order would likely convey a wrong message to the owner concerned that there would be no legal consequences for non-compliance. The owner might even have a false expectation that BD had accepted the existence of the UBWs, as in Case (7). In that case, BD pointed out that it had twice issued a warning letter to the owner and registered the removal orders in the land title records. Hence, BD considered it an excuse of the owner to claim to have mistakenly believed that BD had tacitly approved the non-

compliance with the removal order. Considering that BD's second warning letter came only five and a half years after the issuance of the first warning letter, we agree it would easily cause the owner to have a false expectation about non-compliance with removal orders.

6.21 BD's Building Condition Information System is equipped with a "to-do list" function to remind staff to follow up on cases. At the same time, the Progress Monitoring Committee comprising BD's senior staff regularly monitors the progress of enforcement actions and draws up timetables for handling outstanding cases (see **para. 4.21**). Nevertheless, the serious delays in BD's follow-up and enforcement actions as revealed in the aforesaid cases reflect the ineffectiveness of the existing monitoring mechanism. We have to point out that out of the small number of selected cases for analysis, serious delays were already found in most of them, indicating a possibiliy that they are only the tip of the iceberg.

6.22 We consider that BD should step up its monitoring of follow-up and enforcement actions on UBWs in NTEHs and clearance of backlog cases of non-compliance in accordance with the timetable set by the Progress Monitoring Committee.

Ineffective Monitoring of Registration of Removal Orders with LR

6.23 Registering removal orders with LR in the land title records of NTEHs enables potential buyers to check whether the village house concerned involves any outstanding removal orders. This can safeguard the interests of potential buyers while incentivising owners of village houses with UBWs to demolish those works so that the property value of their houses would not be affected.

6.24 BD's internal guidelines require staff to send a copy of the removal order to LR for registration soon after posting the order at the site concerned. However, the Department has not set any specific time frame for such work (see **para. 2.9**). More importantly, there is no internal monitoring mechanism in place for the registration of removal orders with LR. As a result, BD cannot prevent potential delays or even omissions in a systematic manner. In Cases (2), (5) and (7), removal orders were sent to LR for registration only about 4 to 19 months after issuance (see **paras. 5.5, 5.14 and 5.20**). In Case (7), BD staff even omitted to send one of the removal orders to LR for registration (see **para. 5.22**).

6.25 Owing to BD's failure to arrange timely registration of removal orders with LR, on one hand potential NTEH buyers are unable to safeguard their interests through checking land registration records; on the other hand, the deterrent effect of removal orders cannot be realised to the full extent through registration. We consider that BD should check the removal orders that are outstanding for any omitted registration with LR, and handle them promptly. In addition, for effective monitoring in the future, BD should set a specific time frame for the registration of removal orders with LR for staff to follow and establish a mechanism for internal

monitoring to ensure compliance in all cases. When LR confirms the registration of a removal order, BD staff will record the relevant information on the Building Condition Information System. Hence, the data in the system should help BD's internal monitoring.

Insufficient Deterrent Effect

6.26 Depending on the scale and complexity of the UBWs in question, BD normally requires completion of demolition within 30 to 180 days when issuing a removal order. According to **Table 9** (see **para. 4.20**), BD issued a total of 5,384 removal orders against UBWs in NTEHs between April 2012 and December 2021. Of those orders, 2,016 (about 37.4%) remained outstanding after the deadline had passed as at the end of 2021, among which some remained outstanding for several years or more. BD should prosecute owners who ignore their legal responsibility and let them bear the consequences.

6.27 **Table 11** (see **paras. 4.22 and 4.23**) shows that BD brought a total of 1,383 charges against non-compliance with removal orders between April 2012 and 2021. Of those prosecutions, there were 972 convictions with 86 of them being reconvictions, which accounted for 8.8% of the total number of convictions. We find it necessary for BD to take continuous enforcement actions against owners who repeatedly fail to observe statutory orders so as to urge their compliance. In Case (2), the owners concerned still did not remove the UBWs despite having been prosecuted by BD for a number of times. In the fourth prosecution, the owners were sentenced to eight months' imprisonment (see **para. 5.6**), which was the heaviest penalty for similar cases so far[11]. This reconviction case should serve as a warning for others.

6.28 We notice that notwithstanding BD's prosecutions for non-compliance with removal orders, in the past decade, the average fine for each conviction was about $9,500 only and there were only nine cases (involving three NTEHs) in which imprisonment was imposed (see **Table 10 under para. 4.22**). The average fine upon reconviction for persistent non-compliance increased to about $13,400 only (see **Table 11 under para. 4.23**). We find the existing penalty insufficient to deter non-compliance. Where it involves flagrant contravention of the law (such as NTEHs of four or more storeys) or continuing irregularities, BD should reflect to the Court the seriousness of the case particularly the harm caused by UBWs to society. For greater deterrence, BD should also step up prosecutions against persistent non-compliant owners until their compliance with the removal orders.

[11] BD's press release dated 25 October 2021:
https://www.bd.gov.hk/en/whats-new/press-releases/2021/1025-village-house-owner-given-eight-months-jail-sentence-for-persistently-failing-to-comply-with-removal-orders.html

Strengthening Publicity and Public Education

6.29 On publicity and public education, BD raises public awareness of the enhanced strategy and highlights the importance of building safety through multiple channels (see **paras. 3.27-3.29**). BD's effort in this regard is laudable. Effective publicity and public education are keys to success in enforcement.

6.30 BD's publicity and education campaigns regarding UBWs in NTEHs mainly provide general information on the definition of UBWs and the criteria for enforcement. To strengthen the deterrent effect, the Department also cites the penalties imposed by the Court in serious cases in press releases and the penalties in recent cases in the warning letters to owners. In our view, conviction cases with a heavy penalty imposed by the Court (especially imprisonment) are important materials for publicity and education. Apart from the existing practice of citing the penalties imposed by the Court in press releases and warning letters to individual owners, BD may consider publicising more widely conviction cases involving heavy penalties as a warning to others.

Mechanism for Information Exchange and Coordination between BD and LandsD Should be Improved

6.31 Construction of an NTEH does not require submission of a plan for BD's approval, but application to LandsD for a certificate of exemption instead. In handling reports of UBWs or conducting large-scale operations, BD has to seek information from LandsD before it can determine whether the works concerned are UBWs and what enforcement actions should be taken. Moreover, according to the division of work in the enhanced strategy, LandsD will take lease enforcement actions against UBWs not constituting imminent danger, UBWs not identified as first round targets and those not included in the Reporting Scheme. LandsD's decision whether lease enforcement actions should be taken depends on BD's follow-up actions.

6.32 Currently, BD can obtain information on lot boundaries and locations of NTEHs, aerial photographs and relevant land leases from the Government's internal geographic information system and LR's Integrated Registration Information System. Nevertheless, in the course of follow-up on UBWs in NTEHs, it is still necessary for BD and LandsD to exchange other important information such as whether the NTEH concerned involves any application for redevelopment and whether LandsD would issue a retrospective certificate of exemption for the house. Efficiency of information exchange between BD and LandsD directly affects the follow-up and enforcement actions. In Case (6), BD enquired of LandsD about the status of redevelopment of a village house and LandsD confirmed it had received the relevant application. However, LandsD did not respond to BD's further enquiries about the status of the redevelopment application, and BD took no action to urge its reply. Although the owner concerned did attempt to comply with the removal order by redeveloping the village house, inefficient information exchange

between the two departments had dragged the progress of the case (see **paras. 5.17-5.19**). Similarly, in Case (5), it took LandsD more than two years to reply to BD's enquiry about the status of redevelopment of a village house despite BD's reminders to urge a reply (see **para. 5.15**).

6.33 After the launch of our investigation, BD and LandsD have reached a consensus to streamline the procedures whereby as long as a case fulfils certain criteria, BD is no longer obligated to consult LandsD whether it has issued or will issue a certificate or exemption (see **para. 6.13**). We believe that the streamlined procedures can help reduce greatly the number of cases warranting consultation with LandsD. Nevertheless, we still consider it necessary for BD and LandsD to make improvement measures to ensure timely handling of cases where information exchange is required. We recommend that BD and LandsD regularly draw up a list of pending cases with information outstanding, so as to monitor information exchange and avoid delays or omissions, which would compromise enforcement efficiency. The departments can regularly follow up on cases on the list through the inter-departmental liaison group proposed to be established in the following paragraph.

6.34 Moreover, the departments should consider setting up an inter-departmental liaison group to strengthen coordination and enhance the effectiveness of handling special cases.

Holistic Review of Enhanced Strategy and Mechanism for Assessing Effectiveness

6.35 UBWs in NTEHs has been a long-standing problem. It is commendable of the Government to have implemented the enhanced strategy in April 2012 to extend the scope of actionable UBWs, with a clear policy objective to step up enforcement against newly completed UBWs and existing ones which constitute serious contravention of the law. In BD's opinion, the enhanced strategy has been effective as shown by the facts that the number of reports of suspected UBWs under construction was declining (see **para. 4.11**), that village houses identified with first round targets among those inspected in large-scale operations each year accounted for a similar percentage (see **para. 4.14**), and that the results of random checks on village houses of four storeys or above subject to removal orders in early years revealed no new erection of UBWs after compliance with the orders (see **para. 4.17**).

6.36 While we acknowledge BD's continuous effort in this regard, the above analysis reveals multiple inadequacies in the actual implementation of the strategy in the past decade that inhibit full accomplishment of the policy objective, including failure of BD's enforcement actions to curb the proliferation of UBWs, slow progress of large-scale operations and serious delays in issuing removal orders or instituting prosecutions. As a matter of fact, there were already a large number of UBWs in NTEHs prior to the implementation of the enhanced strategy. Worse

still, during the implementation of the enhanced strategy, nearly half of BD's enforcement actions have been against UBWs built after the implementation (i.e. UBWs under construction or newly completed ones) (see **para. 6.8**), and the number of reports of UBWs has been rising (see **Table 4 under para. 4.6**). Due to resource constraints, BD could neither handle all the UBWs under construction or newly completed nor put all the resources on handling UBWs already existed prior to the implementation of the enhanced strategy. It is questionable whether BD can effectively implement the enhanced strategy in the future given the limited resources. Judging from the slow progress of large-scale operations and the backlog of cases, BD may not have the capacity to manage all necessary enforcement actions.

6.37 Enforcement policies can serve their purposes only if they are effectively implemented. Where a department constantly engages in enforcement actions beyond its capacity, not only would the department be distracted from tackling cases involving the most serious contravention of the law, the credibility of the enforcement policy would also be undermined due to ineffective enforcement. We consider that BD should consolidate its experience in implementing the enhanced strategy in the past decade, holistically review the policy and resource utilisation and explore how the limited resources can be utilised pragmatically to target the most serious types of UBWs and repeated offenders for the time being.

6.38 Meanwhile, BD has established annual work targets (see **para. 4.33**) which are primarily based on the relevant workload. According to the newly established targets, BD would handle about 6,000 reports of UBWs in NTEHs, conduct large-scale operations in about 35 villages, issue about 800 statutory orders, bring prosecutions in 150 or so cases of non-compliance. BD has also set annual work targets for removal of UBWs and rectification of irregularities in existing buildings throughout the territory. The Department, however, has not set targets for individual tasks regarding UBWs in NTEHs. In our view, workload and effectiveness are not necessarily corelated. BD should in tandem formulate performance indicators for measuring effectiveness in accordance with the policy objective. For example, it should take enforcement actions against certain types of UBWs and ensure compliance of a certain percentage of removal orders within a prescribed time frame each year. This would not only help BD evaluate the effectiveness of work and review the measures, but also allow members of the public to understand more easily whether the problem of UBWs in NTEHs has been improved.

OUR RECOMMENDATIONS

6.39 Overall, The Ombudsman has made the following recommendations to BD and LandsD:

BD

(1) compile statistics on UBWs (including the types and numbers of UBWs involved in removal orders and of those subsequently removed) based on the information collected from follow-up and enforcement actions for analysis purposes (see **para. 6.6**);

(2) review the existing guidelines and set clearer internal targets for processing tasks other than site inspections regarding UBWs under construction (see **para. 6.12**);

(3) explore streamlining the enforcement procedures for tackling UBWs under construction (see **para. 6.13**);

(4) review the existing arrangements for consultants' submission of work reports regarding large-scale operations and proactively identify areas for streamlining (such as more extensive use of electronic submission of reports) as well as explore measures to expedite the vetting of consultants' reports. Meanwhile, BD should continue to monitor the performance of consultants (see **para. 6.17**);

(5) step up the monitoring of follow-up and enforcement actions on UBWs in NTEHs and the clearance of backlog cases of non-compliance in accordance with the timetable set by the Progress Monitoring Committee (see **para. 6.22**);

(6) check the removal orders that are outstanding for any omitted registration with LR, set a specific time frame for the registration of removal orders with LR and establish a mechanism for internal monitoring (see **para. 6.25**);

(7) reflect to the Court the seriousness of cases involving flagrant contravention of the law or continuing irregularities and step up prosecutions against persistent non-compliant owners for greater deterrent effect (see **para. 6.28**);

(8) consider publicising more widely conviction cases involving heavy penalties as a warning to others (see **para. 6.30**);

(9) holistically review the policy of the enhanced strategy and resource utilisation and explore how the limited resources can be utilised pragmatically to target the most serious types of UBWs and repeated offenders for the time being. BD should in tandem formulate performance indicators for measuring effectiveness in accordance with the policy objective (see **paras. 6.37 and 6.38**);

BD and LandsD

(10) regularly draw up a list of pending cases with information outstanding for monitoring possible delays or omissions in information exchange (see **para. 6.33**); and

(11) consider setting up an inter-departmental liaison group to strengthen coordination and enhance the effectiveness of handling special cases (see **para. 6.34**).

ACKNOWLEDGEMENTS

6.40 The Ombudsman thanks BD, LandsD and other parties that had provided information for their cooperation and opinions during the course of this investigation.

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Appendix

Appendix

Green and amenity facilities that may be installed in both new and existing New Territories Exempted Houses

	Items
1.	Metal supporting rack for air-conditioning unit (with anti-dripping design), components of split type air-conditioner and lightweight air-conditioner hood ● should not project more than 750mm from the external wall; and ● should not project from a balcony or canopy.
2.	Roller shutter/folding gate installed on the ground floor for security purpose ● with a projection not exceeding 300mm from the external wall; and ● a trapdoor not less than 600mm in width should be provided on the roller shutter for emergency escape purpose.
3.	Cage like external metal window grilles ● should not project more than 500mm from the external wall; and ● where any part of the external window grilles projects over the pavement off the house and has a clear headroom less than 2.5m, such part of the window grilles should not project more than 150mm from the external wall.
4.	Retractable plastic or canvas hood ● affixed to any external wall; ● with a projection of not more than 500mm when retracted; ● with a projection of not more than 2m when fully projected; ● clear headroom should not be less than 2.5m measured from the ground; and ● should not project from a balcony or canopy.
5.	Small overhang located above the side door on the ground floor ● constructed of steel or aluminium structural elements, metal plates or glass; ● clear headroom of not less than 2.5m measured from the ground; and ● should not project more than 750mm from the external wall.
6.	Canopy ● constructed of steel or aluminium structural elements, metal plates or

	glass; ● should not project more than 750mm from the external wall; and ● should not project from a balcony or canopy.
7.	Open and uncovered rooftop gardening trellis ● easily demountable; ● made of timber, aluminium or other lightweight metal framework; ● spacing between horizontal supports or intermediate bars should not be less than 200mm; ● total coverage of not more than 5m^2; and ● height not exceeding 2.5m measured from the roof level.
8.	Small size antenna, television dish antenna, solar energy heater, solar energy equipment# (except for photovoltaic system) which satisfies the following requirements may be installed on the roof or roof of stairhood of both new and existing New Territories Exempted Houses ("NTEHs"): ● exclusive to the occupants of the NTEH; ● total gross weight should not exceed 700kg; and ● if such facilities are installed on the roof, the average loading imposed should not exceed 150kg/m^2. If such facilities are installed on the roof of stairhood, the average loading imposed should not exceed 75kg/m^2. Such facilities should not be installed on a canopy. #Household scale solar water heating system of nominal size comprising one of more solar collector(s) and a water tank.
9.	Photovoltaic systems satisfying the following requirements may be installed on the roof or roof of stairhood in both new and existing NTEHs: System on roof ● the system including its supporting structure should not be higher than 2.5m measured from the roof level. ● the average loading imposed should not exceed 150kg/m^2. ● it should not project more than 750mm from the external wall. ● for system arranged in the form of continuous spread covering, its coverage (only the coverage area within the building is accounted) should not be more than half of the roofed-over area of the NTEH.

	● for system arranged in clusters, each cluster should have coverage of not more than 5m^2 (only the coverage area within the building is accounted) and should be separated from each other by not less than 1m. System on roof of stairhood ● the system including its supporting structure should not be higher than 1.5m measured from the level of the roof of the stairhood. ● the average loading imposed should not exceed 75kg/m^2. ● it should not project more than 750mm from the edge of the roof. Common requirements ● the roof or roof of stairhood on which the system would be installed should be cleared of all unauthorised buildings works ("UBWs"), including those acknowledged by the Buildings Department ("BD") under the Reporting Scheme for UBWs in NTEHs implemented by BD. ● the space underneath the system should not be enclosed^. ● the system should be properly installed and should not adversely affect the structural safety of the building. For system exceeding 1.5m high measured from the roof level, it should be certified by an Authorised Person registered under the Buildings Ordinance for submission of a safety certificate to the Lands Department for record. ● such facilities should not be installed on the canopy. ^If the space is enclosed, BD will take enforcement action under the Buildings Ordinance.
10.	Signboard showing the name of shops on the ground floor ● total display area including supporting frame should not be more than 5m^2; ● mounted to the external wall or installed as bulkhead at shopfront with a projection not exceeding 600mm; and ● clear headroom of not less than 2.5m measured from the ground.
11.	Exhaust duct of food premises/restaurants ● lightweight and part of mechanical installation; and ● conforming to the relevant licensing requirements, for example, exhaust duct should have a minimum clearance of 2.5m measured from the ground and a projection of not more than 600mm from the external wall.

12.	Partition wall erected between the balconies of two adjoining NTEHs ● not exceeding 150mm in thickness; and ● the balconies are of beam-and-slab type construction conforming to the "Technical Requirements for Critical Structural Elements in the Construction of New Territories Exempted Houses".
13.	Unenclosed rooftop awning ● easily and readily demountable or retractable; ● not permanently fixed to the roof; ● made of aluminium or other lightweight metal framework and plastic or canvas cover sheeting; ● coverage of not more than $5m^2$ when fully opened; and ● height not exceeding 2.5m measured from the roof level.
14.	Amenity facilities mounted on or affixed to the external wall such as shrine shelters, lamp posts and lighting installations (including those installed on the rooftops, parapets and overhangs) that are small-scale and do not cause obstruction.
15.	Electricity meter box (on the ground floor only) ● affixed to the external wall; ● made of concrete or metal; ● size not exceeding 1.2m x 1.6m; and ● with a projection not exceeding 0.38m.
16.	Liquefied petroleum gas cylinder storage box (on the ground floor only) ● affixed to the external wall; ● made of concrete or metal; ● size not exceeding 1.2m (in height) x 1m (in width); and ● with a projection not exceeding 0.4m.
17.	Storage cabinet placed on roof ● not permanently fixed to the roof; ● height not exceeding 2m; ● volume not exceeding $3m^2$; and ● should not affect the structural safety and drainage system of the building.

18.	Anti-burglary bars installed on a balcony ● should not project beyond the parapet on the balcony.
19.	Main entrance metal gate ● not causing obstruction to the escape route when opened.
20.	Metal drying rack ● affixed to the external wall; and ● with a projection not exceeding 750mm from the external wall.